

# Adults with cognitive disability in the Queensland criminal justice system

Final Report  
Reform Recommendations

August 2026



The  
**Public Advocate**  
*Influencing change to transform lives*

## Acknowledgement of Country

The Public Advocate and staff acknowledge First Nations peoples as Australia's first peoples and as the Traditional Owners and custodians of the land on which we live. We celebrate the diversity of First Nations cultures across Queensland and pay our respects to Elders past, present and emerging.

## Acknowledgement of Lived Experience

We acknowledge the experiential expertise of adults with impaired decision-making ability, whose rights we seek in our work to promote and protect.

### Public availability

This report is available online at [www.publicadvocate.qld.gov.au](http://www.publicadvocate.qld.gov.au). Alternatively, you may contact our office to access a hard copy.

### Office details

Location: State Law Building, 50 Ann Street, Brisbane, QLD 4000

Mail: GPO Box 149, Brisbane, QLD 4000

Telephone: + (61 7) 3738 9513

Website: [www.publicadvocate.qld.gov.au](http://www.publicadvocate.qld.gov.au)

Email: [public.advocate@justice.qld.gov.au](mailto:public.advocate@justice.qld.gov.au)

### Disclaimer

The views and opinions in this report do not necessarily reflect the views of the Department of Justice or the Queensland Government.

Every effort has been made to ensure this document is accurate, reliable and up to date at the time of publication. The Public Advocate will not accept any responsibility for loss caused by reliance on this information.

### Copyright and license

© Public Advocate (Qld) 2026.

This report is licensed by the State of Queensland (Public Advocate) under a Creative Commons Attribution (CC BY) 4.0 International license.

You can copy, communicate and adapt this report if you attribute the work to the State of Queensland (Public Advocate).



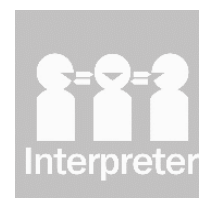
To view a copy of this licence, visit <http://creativecommons.org/licenses/by/4.0/>.

Content from this report should be attributed as: Public Advocate (Qld),

Adults with cognitive disability in the Queensland criminal justice system: Final report, Reform recommendations, 2026.

### Interpreter service

The Queensland Government is committed to providing accessible services to Queenslanders from all culturally and linguistically diverse backgrounds. If you have trouble understanding this report, you can contact our office and we will arrange for an interpreter to effectively communicate the report to you.



The Honourable Deb Frecklington MP  
Attorney-General and Minister for Justice  
Minister for Integrity  
1 William Street  
BRISBANE 4000

21 August 2026

Dear Attorney-General,

Pursuant to Section 209A of the *Guardianship and Administration Act 2000* (Qld), I present to you my report *Adults with cognitive disability in the Queensland criminal justice system: Final report, Reform recommendations 2026*.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'John Chesterman', with a long horizontal flourish extending to the right.

John Chesterman (Dr)  
**Public Advocate**



# Foreword

It is something of a truism that one can judge a society by how it treats its most marginalised citizens. In similar vein, a criminal justice system can only be said to provide justice if it provides justice to all people.

Adults with significant cognitive disability who are involved in our criminal justice system are among our most marginalised citizens. They can be alleged perpetrators, or victims, or witnesses.

This report seeks to make Queensland's criminal justice system more just for adults with cognitive disability. This is not about privileging the rights of alleged offenders over the rights of victims, or about sacrificing community safety.

Rather it is about ensuring the system does what it holds out to do: advance the interests of justice.

It is well established that improvements are needed to enable optimal participation by adults with cognitive disability in the criminal justice system; this applies both to criminal justice processes themselves, and to the delivery of associated support services. This need for improvement has, if anything, become more pronounced with the operation of the National Disability Insurance Scheme, which has resulted in new demarcation arguments about the relative responsibilities of the state government in making its criminal justice processes accessible, and the federal government in providing access to disability support. Failings in either area – whether that is an inaccessible court process, or the absence of a disability support worker who could help a person understand their interactions with police – can have a very significant impact on the delivery of justice.

A number of reports, including most prominently the final report from the Disability Royal Commission in 2023, have identified key systemic failings that confront people with cognitive disability when they interact with the criminal justice system.

Broadly speaking, these problems include:

- inadequate assessments of the support needs of, and the provision of support to, people during and after their engagement with various parts of the criminal justice system, including in police interviews, in giving evidence in court, and during periods of detention;
- historically inflexible policing practices and mindsets;
- limitations on the retention and sharing of information about people's support needs;
- uncertain boundaries between state and Commonwealth funded services, particularly in the interface between the provision of disability support (which is typically federally funded) and accessible criminal justice processes and requirements (which are typically state responsibilities);
- suboptimal processes and governance arrangements for people subject to forensic orders; and
- exacerbated impacts of all of the above on First Nations adults with cognitive disability.

This report recommends a number of ways in which our criminal justice system can be improved, including by ensuring that:

- its processes are as easy to understand and follow as they can be;
- our police service is able to utilise its full suite of diversionary options;
- more crisis response options are available so that our police service is called upon less than it currently is to respond to mental health crises or behavioural disturbances;
- our forensic system (mental health and disability) – which we need to remember generally applies to people who have not been convicted of crimes – is properly treatment oriented;
- 'unfitness to plead' and 'not guilty by reason of mental impairment' laws do not inadvertently become avenues for indefinite detention; and that
- the services provided to prisoners maximise their rehabilitation and ability to reintegrate into society upon their release.



This report makes 26 reform recommendations. These are not utopian. They are pragmatic and implementable.

As the methodology section of this report notes, this work has been many years in the making. Five discussion papers have provided the basis for the extensive consultations that my colleagues and I have undertaken throughout the state.

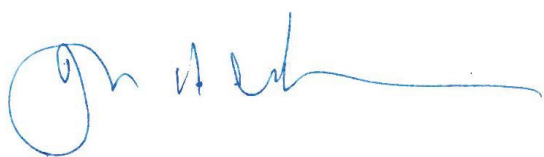
The formal and informal discussions and other communications I have had on this project's topic amount, in my estimation, to hundreds of interactions over the past five years with representatives of all parts of Queensland's criminal justice system, including with adults with cognitive disability who have been involved with this system in one way or another.

I thank all of the people with whom my colleagues and I have spoken in preparing this report, without whose assistance the report would not be what it is. Thank you to the police officers, the corrections staff, the advocates, the lawyers, the public servants in various government departments, the support workers, and the people with disability with whom we have engaged. It's risky to single any agencies out, but I particularly want to thank Stephen Tillett and his colleagues at the First Nations Justice Office, as well as Michelle Moss and the Queenslanders with Disability Network, for going beyond what was initially asked of them. I also want to thank the dozen or so people (who include people with disability, statutory office holders, senior bureaucrats, academics and retired judges) with whom I have discussed the report's final recommendations, whose insights have been very beneficial.

I also want to thank, of course, the staff members in my small office who have worked so assiduously in preparing this report and the five discussion papers that preceded it: Tracey Martell, Jacinta Colley (who led the writing of this final report), Yuu Matsuyama, Kelly Motley and Hannah Hodgson.

No matter who I speak to about the operation of our criminal justice system, no matter where they work or what their experiences have been, people tend to want the same thing; a fair system that ensures both justice and community safety, and that enables everyone to get on with their lives. That, in a nutshell, is the aspiration behind this report.

I look forward to engaging with the Queensland Government as it considers the report and its recommendations.



John Chesterman  
Public Advocate



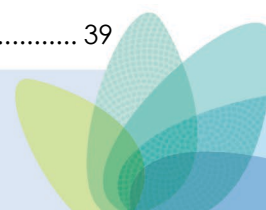
# Acronyms and abbreviations

|                             |                                                                                                                   |
|-----------------------------|-------------------------------------------------------------------------------------------------------------------|
| ABI                         | Acquired Brain Injury                                                                                             |
| AMHS                        | Authorised Mental Health Service                                                                                  |
| DFSDSCS                     | Department of Families, Seniors, Disability Services and Child Safety                                             |
| Disability Royal Commission | Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability                         |
| DOJ                         | Department of Justice                                                                                             |
| FASD                        | Fetal Alcohol Spectrum Disorder                                                                                   |
| FDS                         | Forensic Disability Service                                                                                       |
| FNJO                        | First Nations Justice Office                                                                                      |
| HASI                        | Hayes Ability Screening Index                                                                                     |
| IRNA                        | Immediate Risk Needs Assessment                                                                                   |
| ITP                         | Independent Third Person                                                                                          |
| JAS                         | Justice Advocacy Service                                                                                          |
| MHRT                        | Mental Health Review Tribunal                                                                                     |
| NDIA                        | National Disability Insurance Agency                                                                              |
| NDIS                        | National Disability Insurance Scheme                                                                              |
| NPM                         | National Preventative Mechanism                                                                                   |
| OPCAT                       | Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment |
| QAO                         | Queensland Audit Office                                                                                           |
| QCS                         | Queensland Corrective Services                                                                                    |
| QDN                         | Queenslanders with Disability Network                                                                             |
| QIS                         | Queensland Intermediary Scheme                                                                                    |
| QPS                         | Queensland Police Services                                                                                        |
| SDA                         | Specialist Disability Accommodation                                                                               |
| SIL                         | Supported Independent Living                                                                                      |

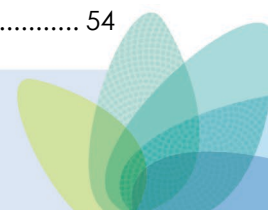


# Contents

|                                                                                   |    |
|-----------------------------------------------------------------------------------|----|
| Foreword .....                                                                    | 4  |
| Acronyms and abbreviations .....                                                  | 6  |
| Contents .....                                                                    | 7  |
| Executive summary .....                                                           | 10 |
| Recommendations .....                                                             | 15 |
| System-wide recommendations .....                                                 | 15 |
| Sector-specific recommendations .....                                             | 16 |
| Police .....                                                                      | 16 |
| Courts .....                                                                      | 17 |
| Forensic system (mental health and disability) .....                              | 17 |
| Detention .....                                                                   | 18 |
| Introduction.....                                                                 | 19 |
| The Public Advocate .....                                                         | 19 |
| Cognitive disability .....                                                        | 19 |
| The criminal justice system.....                                                  | 19 |
| A person's journey through the Queensland criminal justice system.....            | 20 |
| The Queensland Police Service.....                                                | 20 |
| The Courts .....                                                                  | 21 |
| Detention .....                                                                   | 22 |
| The Forensic System (Mental Health and Disability) .....                          | 23 |
| Victims and Witnesses.....                                                        | 23 |
| The Public Advocate's report .....                                                | 27 |
| Methodology .....                                                                 | 28 |
| Discussion papers.....                                                            | 28 |
| Stakeholder consultation .....                                                    | 29 |
| Roundtables.....                                                                  | 30 |
| Site visits .....                                                                 | 30 |
| Other discussion and feedback.....                                                | 30 |
| Discussion papers .....                                                           | 32 |
| Discussion paper 1: Policing .....                                                | 33 |
| Discussion paper 2: Courts.....                                                   | 34 |
| Discussion paper 3: The forensic system (mental health and disability) .....      | 35 |
| Discussion paper 4: Detention.....                                                | 36 |
| Discussion paper 5: Victims and witnesses .....                                   | 37 |
| Stakeholder feedback.....                                                         | 38 |
| Policing.....                                                                     | 38 |
| Challenges with emergency responses to mental health and behavioural issues ..... | 38 |
| Respectful interactions .....                                                     | 38 |
| Identification of cognitive disability .....                                      | 39 |
| Issues with timely access to relevant information .....                           | 39 |



|                                                                                               |    |
|-----------------------------------------------------------------------------------------------|----|
| A lack of access to support for adults with cognitive disability .....                        | 39 |
| Prevention .....                                                                              | 39 |
| Opportunities for improvement .....                                                           | 40 |
| Courts .....                                                                                  | 41 |
| Identification and assessment of disability .....                                             | 41 |
| Bail.....                                                                                     | 41 |
| Court processes and proceedings .....                                                         | 41 |
| Remand.....                                                                                   | 42 |
| Support and assistance .....                                                                  | 42 |
| Pleading guilty .....                                                                         | 42 |
| Respectful interactions .....                                                                 | 42 |
| Opportunities for improvement .....                                                           | 43 |
| The forensic system (mental health and disability) .....                                      | 44 |
| Fitness for trial.....                                                                        | 44 |
| Assessment and diversion options.....                                                         | 44 |
| Treatment and support .....                                                                   | 44 |
| Revocation of orders .....                                                                    | 45 |
| Indefinite detention .....                                                                    | 45 |
| Restrictive practices.....                                                                    | 45 |
| Forensic Disability Service (FDS) .....                                                       | 46 |
| Integration across the system.....                                                            | 46 |
| Interactions with other systems.....                                                          | 46 |
| Staff skills and training.....                                                                | 46 |
| Community-based services .....                                                                | 46 |
| Potential opportunities for reform .....                                                      | 47 |
| Detention .....                                                                               | 48 |
| Identification of disability .....                                                            | 48 |
| Access to disability-related supports .....                                                   | 48 |
| Access to programs, education and training in prison .....                                    | 48 |
| Access to mental health services .....                                                        | 49 |
| Discharge planning.....                                                                       | 49 |
| Challenges with reintegration into the community .....                                        | 50 |
| Culturally appropriate supports and services.....                                             | 50 |
| Information sharing .....                                                                     | 50 |
| Opportunities for improvement .....                                                           | 50 |
| Victims and witnesses.....                                                                    | 52 |
| Disproportionate representation of people with cognitive disability as victims of crime ..... | 52 |
| Reporting crime.....                                                                          | 52 |
| Definitions of family and domestic violence .....                                             | 53 |
| Extension of preliminary complaint evidence to offences other than sexual offences.....       | 53 |
| Credibility .....                                                                             | 54 |
| Giving evidence.....                                                                          | 54 |



|                                                                       |    |
|-----------------------------------------------------------------------|----|
| Queensland Intermediary Scheme (QIS) .....                            | 54 |
| Navigating a complex system.....                                      | 55 |
| Respectful interactions .....                                         | 56 |
| Victim impact statements .....                                        | 56 |
| Opportunities for improvement .....                                   | 56 |
| Reforming the system: Critical issues and reform recommendations..... | 58 |
| System-wide .....                                                     | 58 |
| First Nations peoples with cognitive disability.....                  | 58 |
| Accessing disability supports .....                                   | 61 |
| Responding to mental health and behavioural crises .....              | 62 |
| Information sharing .....                                             | 64 |
| Access to independent advocacy services .....                         | 65 |
| Section 216 of the <i>Criminal Code 1899</i> (Qld).....               | 67 |
| Fines .....                                                           | 68 |
| OPCAT .....                                                           | 69 |
| Sector-specific recommendations .....                                 | 70 |
| Police .....                                                          | 70 |
| Courts .....                                                          | 74 |
| Forensic system (mental health and disability) .....                  | 80 |
| Detention .....                                                       | 84 |
| Conclusion .....                                                      | 90 |
| Appendix 1: List of stakeholders .....                                | 91 |



# Executive summary

This report is the result of more than two years of project work completed by the Public Advocate.

It has included the development of five discussion papers, each exploring a critical element of the criminal justice system, followed by extensive consultation with stakeholders including government agencies, peak bodies, advocacy organisations, service providers and people with disability.

In all, the project has considered the voices, opinions and experiences of a wide range of stakeholders, as well as drawing on research papers and reports, and the recommendations of various inquiries and strategies prepared by government agencies, both in Queensland and other jurisdictions.

The contributions of all those involved in this project are recognised, acknowledged and appreciated.

Whether they are victims, witnesses or alleged or convicted offenders, adults with cognitive disability who interact with the Queensland criminal justice system often find themselves in a complex and confusing place. They face hard to understand processes coupled with inaccessible or non-existent support services, all underscored by insufficient recognition of people's disability support needs.

The work on this report began with the recognition that there is a pronounced over-representation of adults with cognitive disability in the criminal justice system in Queensland.

After significant research, consultation with critical stakeholders and people with lived experience, and discussion and debate, this report – and the five discussion papers that preceded it – seeks to document a more complete picture of how the criminal justice system operates in Queensland and the areas where reforms are needed.

Recognising that the criminal justice system is made up of several different components, this project was divided into five key areas – policing, courts, detention, the forensic system (mental health and disability), and victims and witnesses.

While there is a focus on key components of the system, as the project progressed it became apparent that certain issues exist across the criminal justice system and need to be addressed at a system wide level.

It was also apparent that many of the issues identified in this report are not new and have been identified previously across a number of years, either in other research reports, investigations or commissions of inquiry.

Consequently, the reform recommendations in this report include system-wide reforms, followed by reforms specific to individual components of the criminal justice system.

Starting with the **system-wide issues**, the project identified problems experienced by adults at all stages of the criminal justice journey that were related to **accessibility, advocacy** and **equity**.

Adults with cognitive disability may process information differently. When confronted with processes that are complex, and that require the filling out of forms and the making of quick decisions, adults with cognitively disability may exhibit behaviours that can potentially escalate situations or lead to sometimes significant and negative outcomes.



In these circumstances, the availability of independent supports to assist with understanding, and advocacy to assert rights, are essential.

This need also underscores the importance of criminal justice processes being **accessible**, physically and cognitively, to adults with cognitive disability.

A focus on accessibility, with the provision of initiatives that recognise that people take in information differently and learn using a whole range of senses, is required across the system.

Improvements to ensure that adults understand 'what is going on' at each stage of the criminal justice process will not only be beneficial to adults with cognitive disability but have the potential for more universal impacts across the system – benefitting, for instance, adults with lower literacy levels and those with learning difficulties.

Improvements in understanding can also potentially lead to improvements in compliance, with more adults turning up to court at the required time and date or being aware of their bail conditions and understanding what happens should they breach these conditions.

In terms of addressing **equity** across the system, it has long been recognised that First Nations peoples are overrepresented in the criminal justice system. This project heard that conditions like Fetal Alcohol Spectrum Disorder (FASD), acquired brain injury (ABI) and other neurological conditions are prevalent among offenders and those in custody who are First Nations peoples.

Support including the greater use of First Nations languages and providing culturally safe, accessible and appropriate rehabilitation and habilitation programs represent a strong starting point from which to address current failings in relation to system equity. Consequently, these types of initiatives are suggested as part of a broader targeted approach to directly address the overrepresentation of First Nations people with cognitive disability in the criminal justice system.

Other equity-based initiatives in the reform recommendations for this project include changes to legislation so that adults with cognitive disability can make decisions regarding their sexual relationships, and looking for alternatives to incarceration and the accumulation of fines for non-violent offending by people with disability.

Moving on to the various components of the criminal justice system and specific reform recommendations, this report looks first to the topic of **policing**.

For most victims, witnesses and alleged offenders, interactions with police represent the first contact they have with the criminal justice system in Queensland. How this contact progresses is critical, as it can influence the journey of a person through the system significantly.

Immediately following an incident, regardless of whether the person involved is a victim or alleged offender, emotions run high. This can result in people, and particularly an adult with cognitive disability, not fully comprehending information or instructions provided to them, or potentially displaying behaviours that can result in a situation being escalated.

The project found that additional proactive approaches and engagement with adults with cognitive disability in the design and implementation of police training may assist, along with more direct interventions during the police interview process.

Changes to the Queensland Police Service's Disability Service Plan would be of benefit here. This could include: the development of accessible information about police processes; initiatives to facilitate relationships between individual police officers and adults with cognitive disability; and the revision of policies and operational guidelines.

When an adult with cognitive disability is charged with a crime, an appearance in **court** is often the next stage of their interaction with the criminal justice system.



Attendance at court can be a particularly challenging time, as the processes and procedures followed in a court room are unlike those of everyday life. People have roles and responsibilities that can be unclear to newcomers and instructions can be given that are confusing and disorientating. The experience, particularly in lower-level courts, can also be loud and appear chaotic as proceedings tend to move very quickly, and there are multiple 'comings and goings' in and out of the courtroom.

Consequently, the project is recommending that the government consider the accessibility of the court system in greater detail, to develop a program of reforms to ensure that courts and court processes are accessible to people with cognitive disability.

The aim of these reforms for adults with cognitive disability is about improving the understanding they have of the processes involved, their rights and obligations, and the consequences they may face as an alleged or convicted offender.

Examples of specific programs that support the goal of accessibility include the introduction of court support workers, whose role would include being available after court proceedings to assist people to understand the court's requirements, be it in relation to their bail, sentence or other matters.

Additional and more specific initiatives include the introduction of justice case managers. The role of these managers would be to assist adults with cognitive disability who have had multiple contacts with the criminal justice system and significant unmet support needs to access disability support and other services that may assist in breaking the cycle of recidivism.

Further consideration of court-imposed conditions associated with community-based orders is also recommended, including the potential introduction of justice plans. The development of a justice plan to accompany a community-based order allows for engagement with available services and disability supports that may reduce the likelihood of an adult with cognitive disability committing further offences in the future.

Should an adult receive a sentence at court, the next stage in the criminal justice system may involve a period of **detention** at a correctional centre.

As for other stages of the journey through the criminal justice system, entry into a correctional centre can be confronting and confusing, and it is at this entry stage that assessments should be conducted to assess cognitive disability.

Many adults with cognitive disability will not self-identify at this stage of the process, to avoid drawing attention to any vulnerability that could potentially cause them to stand out or come to the attention of others in a prison environment.

In custodial settings, regardless of whether or not a person has been identified as having a cognitive disability, improvements are required to the provision of supports to assist with day-to-day living. There is also a need for improvements to the making of reasonable adjustments in the delivery of generic programs and services to facilitate rehabilitation.

Disability-related services and supports are limited and difficult to access while in a correctional centre, leaving many prisoners with significant unmet needs, or leading to prisoners having to rely on other prisoners acting as personal carers.

The need for support from other prisoners can also extend to assistance to understand and follow instructions issued by corrective services officers as well as filling out forms associated with processes, such as applying for parole.

Having to develop relationships with other prisoners due to a need for support can lead to exploitation and violence as a person's vulnerabilities are exposed to others.



Access to rehabilitation programs for adults with cognitive disability can also be limited. Despite the prison environment having an overrepresentation of adults with cognitive disability, eligibility for rehabilitation programs still appears to be reliant on meeting criteria that limit opportunities for those with cognitive disability to participate.

Additionally, prison programs do not appear to include a focus on skill development in areas that would assist people to re-integrate into the community after they are released. The background of many prisoners, including those with cognitive disability, can include childhoods where the development of basic skills like cooking, cleaning, budgeting and personal care were not prioritised. If there is limited opportunity to develop these skills while in prison, the ability of prisoners to re-integrate in the community and not re-offend reduces significantly.

Post-release planning can also be problematic, with people often caught in a void where they are no longer in prison but are not yet re-integrated into the community, as they have not been able to secure safe and affordable accommodation, to gain employment, or to organise the reactivation of assistance payments like the Disability Support Pension.

During an appearance in mainstream court, if an alleged offender is suspected not to have the decision-making ability to instruct a lawyer, they can be diverted to the Mental Health Court, which is the entry point to the **forensic system (mental health and disability)** in Queensland.

This component of the system is also complicated and difficult to understand. Most often, adults with cognitive disability who are diverted to this court will leave with a Forensic Order (disability) or a Forensic Order (mental health).

The conditions of this order will involve living at an authorised mental health service (AMHS) overseen by Queensland Health, at the Forensic Disability Service (FDS) located at Wacol and operated by the Department of Families, Seniors, Disability Services and Child Safety (DFS DSCS), or in the community, typically under the supervision of an AMHS.

Well documented problems affect this part of the criminal justice system, related to the tests used to effect diversion to the Mental Health Court, the potentially indefinite nature of Forensic Orders, the fragmentation of the current system, the potential for institutionalisation of people on inpatient orders, and inadequate monitoring under the Optional Protocol against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

Forensic Orders can, and sometimes do, last a lifetime, meaning that a person with cognitive disability under an order can live with many restrictions on their movements and activities.

This may limit their ability to participate in the community long after they would have been released from prison had they progressed through the mainstream court and been sentenced.

If they are an inpatient at an AMHS, treatment for their mental health concern is the main priority, as opposed to any rehabilitation or habilitation programs to address criminogenic behaviours or recidivism.

While the FDS has a focus on transitioning people back into the community and does provide both rehabilitation and habilitation programs for clients, there is only one facility available across all of Queensland. This facility is small (catering to a maximum of 10 people) and there have been criticisms of its operations.

Most people under a Forensic Order (Disability) are under the supervision of an AMHS, despite not typically having a mental illness. One of the major reforms called for in this report concerns the need for a complete review and redesign of the forensic system (mental health and disability) in Queensland, commencing with a repeal of the *Forensic Disability Act 2011* (Qld), and its replacement with an Act that does not medicalise the behavioural changes sought for people under its remit. This needs to be accompanied by the development of a modern system that is capable of delivering high quality therapeutic care across the state while ensuring community safety.



While interactions with the criminal justice system in Queensland by adults with cognitive disability can be initiated by their committing of an offence, people who are **victims** of, or **witnesses** to, crime also interact with the system.

Adults with cognitive disability are disproportionately represented as victims of abusive or violent criminal conduct and can be at greater risk of victimisation due to the vulnerabilities created if they need to rely on other people (like a carer, support worker, or family member) to assist them to do some things.

Approaching the police to report a crime can be daunting for anyone — for an adult with cognitive disability who may have difficulties communicating, it can be incredibly challenging. Added to communication difficulties can be a fear that the person will not be believed or that they need to change their living arrangements, particularly if the person who has committed the crime currently lives with them.

Should matters progress to court the challenges continue, with victims and witnesses with cognitive disability confronted with a courtroom and processes that can be intimidating, as well as a questioning process that can be adversarial and aggressive.

The expansion of the Queensland Intermediary Scheme could assist in addressing these challenges, providing victims and witnesses with cognitive disability with access to a service that can assess their needs and recommend, to police and the court, any reasonable adjustments that need to be made to improve understanding and communication.

Other reform recommendations included in this report to assist victims and witnesses are embedded in measures to improve court accessibility, the interviewing process employed by police and improving advocacy services to ensure that voices are heard.

This report discusses these critical issues in further detail, along with the opportunities for improvement identified through discussions with people who work in this system, and people with lived experience of disability, who kindly shared their stories, ideas and experiences. The goal being sought is simply stated: equal access to justice for adults with cognitive disability.



# Recommendations

This report makes 26 reform recommendations concerning the criminal justice system in Queensland, including 8 system-wide recommendations and 18 sector-specific recommendations.

## System-wide recommendations

### Recommendation 1

The Queensland Government should develop a specific targeted approach to address the over-representation of First Nations adults with cognitive disability in the criminal justice system. This approach, among other things, should ensure that actions in response to other reform recommendations in this report adequately cater for First Nations adults with cognitive disability, with a particular emphasis placed upon:

- a) improving the provision of accessible information during and following the interactions of First Nations adults with cognitive disability with the Queensland Police Service and Queensland courts, including through greater use of First Nations languages;
- b) ensuring the provision of accessible and culturally-appropriate disability and independent living support programs in correctional facilities; and
- c) guaranteeing the provision of culturally-appropriate post-detention support.

### Recommendation 2

The Queensland Government should trial the operation of Justice Case Managers, whose role should be to coordinate the provision of support services to adults with cognitive disability who have repeat contact with the criminal justice system and who have significant unmet support needs. Justice Case Managers should be available at any stage of the criminal justice process, with priority placed on their availability to people involved in repeat summary offending. The role of Justice Case Managers should be coordinated with existing programs, including Court Link.

### Recommendation 3

The Queensland Government should fund and promote the expansion and coordination of co-responder programs, which enable health and other supportive responses to be prioritised when mental health or behavioural crises occur in the community. This should involve:

- a) the establishment of new co-responder programs in areas of significant need;
- b) the creation of a central statewide point of contact for co-responder programs; and
- c) the development of standardised expectations concerning the roles and responsibilities of co-responding agencies.

### Recommendation 4

To ensure that the support needs of people with cognitive disability are able to be identified and met across the criminal justice system, the Queensland Government – after consulting with the Queensland Police Service, Queensland Health, the Queensland Ambulance Service, Queensland courts, and Queensland Corrective Services – should develop a practical way in which information concerning people's support needs can safely and reliably be captured and shared across policing, health, court, and correctional sectors.

### Recommendation 5

The Queensland Government should expand the funding available to advocacy agencies to provide disability justice advocacy support to people with cognitive disability who are involved in the criminal justice system.



## Recommendation 6

Section 216 of the *Criminal Code 1899* (Qld) should be replaced by a provision that makes it illegal for a person who provides treatment or support services to a person with cognitive disability to engage in sexual conduct with that person.

## Recommendation 7

The Queensland Government should identify and promote alternative ways of holding adults with cognitive disability accountable for low-level non-violent offending that do not result in incarceration or the accumulation of significant fines.

## Recommendation 8

The Queensland Government, in consultation with the Commonwealth government, should ensure that Australia's OPCAT obligations are able to be met in relation to places of detention in Queensland. This includes adequate monitoring of the detention of adults with cognitive disability in Queensland forensic and mainstream custodial settings.

# Sector-specific recommendations

## Police

### Recommendation 9

Section 422 of the *Police Powers and Responsibilities Act 2000* (Qld) should be amended to include a stronger statement of the entitlement of an adult with cognitive disability to have a support person present during any police interview.

### Recommendation 10

The Queensland Government should trial the operation of an independent police interview support and assistance program that is available to people who appear to have a significant cognitive disability and who do not have anyone available to support them while being interviewed by police.

### Recommendation 11

The Queensland Police Service (QPS), in the next iteration of its Disability Service Plan, should include a suite of new commitments in order to improve interactions between QPS members and people with cognitive disability. The next plan should be drafted in consultation with people with cognitive disability, and should incorporate the following elements:

- a) a review of key internal policies, procedures and operational guidelines, including the Police Manual, to ensure that the needs of people with cognitive disability are adequately addressed;
- b) a review of relevant external-facing QPS documentation and related communications materials, to ensure that they are accessible to people with cognitive disability;
- c) expanded training offerings and requirements for new and continuing QPS members, which should involve direct interaction with people with cognitive disability;
- d) a planned program to improve the capacity of QPS to explain in an accessible way (including, where necessary, in languages other than English) the implications of any formal interactions between QPS members and people with cognitive disability; and
- e) the establishment of a process by which QPS is able to be advised about an adult's care and support needs, where this would help to optimise any police interactions with them.



## Courts

### Recommendation 12

The Queensland Government should expand on the work undertaken as part of the Department of Justice's 'Accessible Courts and Tribunals' initiative to ensure that Queensland's courts and tribunals are accessible to people with cognitive disability.

### Recommendation 13

The Queensland Government should trial an extension of the Queensland Intermediary Scheme so that it is available to adults with significant cognitive disability who are witnesses to any indictable offence.

### Recommendation 14

The *Evidence Act 1977* (Qld) should be amended to enable greater flexibility for people with cognitive disability to be supported to give evidence.

### Recommendation 15

The Queensland Government should ensure that a court support officer is available to any adult with an apparent cognitive disability immediately following a court hearing, so that information about the hearing, including the terms of any order, can be explained in an accessible way.

### Recommendation 16

The *Penalties and Sentences Act 1992* (Qld) should be amended to enable Queensland courts to require an offender, as a condition of their release or the making of a community-based order, to actively engage with one or more services described in a Justice Plan.

### Recommendation 17

The Queensland Government, in liaison with the Queensland Victims' Commissioner, should ensure that the process by which Victim Impact Statements are made is accessible to people with cognitive disability, and that victims of crime who have a cognitive disability are supported to prepare Victim Impact Statements where they wish to do so.

## Forensic system (mental health and disability)

### Recommendation 18

The *Mental Health Act 2016* (Qld) should be amended to require that a maximum period of detention is specified in any forensic order made following a finding that a person is unfit for trial or was of 'unsound mind' at the time of the alleged offence.

### Recommendation 19

The Queensland Government should redesign Queensland's forensic disability laws, governance arrangements and practices to establish a modern forensic disability system that is capable of delivering high quality service interventions while ensuring community safety. This should include:

- a) redesigning the governance mechanisms concerning the care provided to all people on Forensic Orders (Disability);
- b) requiring all people on Forensic Orders (Disability) to be provided with:
  - i. behaviour change services to enable their risk to the community to be minimised, and
  - ii. identified pathways to potentially having their orders revoked;



- c) repealing the *Forensic Disability Act 2011* (Qld) and replacing it with modern forensic disability legislation that does not unduly medicalise the behaviour change service needs of people within its ambit; and
- d) the establishment of at least one new forensic disability facility in the state's north.

## Detention

### Recommendation 20

Queensland Corrective Services should rigorously and reliably screen all prisoners for cognitive disability, utilising culturally appropriate custodial screening tools. Where indicated, follow-up assessments should then be undertaken to identify prisoners' disability-related support needs, which should be met in line with ensuing recommendations.

### Recommendation 21

Queensland Corrective Services should publish data annually on the number of Queensland prisoners with cognitive disability.

### Recommendation 22

Queensland Corrective Services should ensure that all prisoners with cognitive disability have access to adequate support and rehabilitation programs and services.

### Recommendation 23

The Queensland Government, in consultation with Queensland Corrective Services and the National Disability Insurance Agency, should ensure that prisoners with cognitive disability are able to receive the services funded by the National Disability Insurance Scheme to which they are entitled.

### Recommendation 24

Queensland Corrective Services should ensure that generic independent living skills development programs are available in all correctional facilities, and that these are accessible to people with cognitive disability. These programs should extend to education on financial literacy, household management and personal care.

### Recommendation 25

Queensland Corrective Services, in collaboration with the Department of Housing and Public Works and the Department of Families, Seniors, Disability Services and Child Safety, should ensure that adequate planning is undertaken prior to any person with cognitive disability being released from custody, so that the person has appropriate housing, and is able to access relevant support services, upon their release.

### Recommendation 26

Queensland Corrective Services, in collaboration with the Department of Families, Seniors, Disability Services and Child Safety, should ensure that people with cognitive disability have immediate access to a support worker upon their release from custody, whose role is to assist the person, if this is needed, to access relevant services.



# Introduction

## The Public Advocate

The role of the Public Advocate is established under chapter 9 of the *Guardianship and Administration Act 2000* (Qld) to promote and protect the rights and interests of Queensland adults with impaired decision-making ability through systemic advocacy.

Section 209 of the *Guardianship and Administration Act* states that the functions of the Public Advocate are:

- a) promoting and protecting the rights of adults with impaired capacity (the adults) for a matter;
- b) promoting the protection of the adults from neglect, exploitation, or abuse;
- c) encouraging the development of programs to help the adults to reach the greatest practicable degree of autonomy;
- d) promoting the provision of services and facilities for the adults;
- e) monitoring and reviewing the delivery of services and facilities to the adults.<sup>1</sup>

## Cognitive disability

The focus of this report is 'adults with cognitive disability'. Cognitive disability, as the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission) has noted, 'arises from the interaction between a person with cognitive impairment and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.'<sup>2</sup> People may experience cognitive impairment if they have an intellectual disability, acquired brain injury (ABI), neurological disorders (such as dementia), or if they have a mental health condition.<sup>3</sup>

Adults with cognitive disability may experience difficulty with communication, attention, concentration, memory, thinking, and learning.<sup>4</sup> Sometimes an adult with cognitive disability will have impaired decision-making ability. This may be episodic or temporary for some, requiring intensive supports at specific times, while others may require lifelong support with decision-making and communicating their choices.

In some places this report also uses other terminology to reflect the language used in reports, legislation, policies, research, and official documents being referenced. This includes 'people with impaired decision-making ability', 'people with impaired capacity', people with an 'impairment of the mind', 'people with cognitive impairment' or, more broadly, 'people with disability' or 'people with a mental health condition'.

## The criminal justice system

The criminal justice system in Australia is complex, with considerable variability evident at Commonwealth, state and territory levels when it comes to the existence of certain criminal offences and the ways that police services and courts deal with alleged breaches of them. Each jurisdiction also differs in terms of enforcement, prosecution and judgement of criminal charges.

---

<sup>1</sup> *Guardianship and Administration Act 2000* (Qld) s 209.

<sup>2</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Executive Summary: Our vision for an inclusive Australia and recommendations', *Final report*, 2023, p. 316.

<sup>3</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Executive Summary: Our vision for an inclusive Australia and recommendations', p. 316; DV Jeste, GML Eglit, BW Palmer, JG Martinis, P Blanck, & ER Saks, 'Supported decision making in serious mental illness', *Psychiatry*, vol. 81, no. 1, 2018, pp. 28–40.

<sup>4</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Executive Summary: Our vision for an inclusive Australia and recommendations', p. 316.



Given this variability, it is important to note that this report explores the criminal justice system in Queensland and the issues that arise in this state.

The criminal justice system in Queensland involves a vast array of people and roles, including the police service, prosecutors, defence lawyers, support groups, the courts, the corrections system, the forensic system (mental health and disability) and the parole system.

People with cognitive disability may interact with the criminal justice system for a number of reasons, including as witnesses, as victims of crime, or as those accused of committing a criminal offence.

There have been many concerns raised in the past regarding how the criminal justice system interacts with people with disability, including recently in the work of the Disability Royal Commission.<sup>5</sup>

In short, people with cognitive disability are overrepresented in the criminal justice system, leading to concerns about the lack of access to justice for people with disability, and about the mainstream criminal justice system's failure to make sufficient accommodations for the needs of people with disability.<sup>6</sup>

These matters are highly relevant to the Public Advocate's systemic advocacy functions in relation to adults with impaired decision-making ability.

A number of different terms are used throughout legislation, policies, and the literature, to describe people who engage with the system, and the terminology often changes as they progress through the system. For example, terms can include: 'person accused of a crime', 'alleged offender', 'defendant', 'offender', 'perpetrator' and 'prisoner'. Additionally, people may engage with the system as 'victims of crime', 'victim/survivors' or 'witnesses'. This report uses many of these terms to reflect the stage of the criminal justice system being discussed and the language used by key stakeholders, and in relevant legislation and policies.

## A person's journey through the Queensland criminal justice system

This section of the report presents a brief overview of some of the key elements of the criminal justice system following an adult's potential journey through the system if they are accused of a crime or are a victim of, or witness to, a crime. Each individual's journey can differ depending on a range of factors and can potentially be more complex and vary in terms of process and outcomes. The aim of this section is to present a broad overview that provides context for the issues raised within this report.

### The Queensland Police Service

In Queensland, a person's initial contact with the criminal justice system typically involves the Queensland Police Service (QPS).

In situations where a crime has occurred, QPS is the primary agency responsible for responding to criminal behaviour in the community. It is responsible for initial responses, including the potential arrest and charging of people suspected of committing an offence. Some people may also be placed in a watchhouse under police custody, either prior to or following being charged with an offence. Usually, QPS is also responsible for the prosecution of what are known as summary

---

<sup>5</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 8: Criminal justice and people with disability', *Final report*, 2023.

<sup>6</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 8: Criminal justice and people with disability'.



offences, including public nuisance, trespass, drink driving and speeding.<sup>7</sup> Increasingly, police are also required to respond to situations where people are experiencing a mental or behavioural health problem or other social issues.<sup>8</sup> Police are often the first responders to people experiencing a behavioural crisis related to their disability or mental health. They can also conduct welfare checks following a request to do so, which involves an in-person visit to a person's home to check on their safety and wellbeing. Police may also be requested to respond to a missing persons report, for example when a person living in a supported residential setting leaves or does not return, and a staff member contacts the police.<sup>9</sup>

## The Courts

Once a charge is laid by police, there are several pathways leading to a court appearance including:

- Being granted bail by the police.
- Being issued with a 'Notice to appear' or given a complaint and summons by police.
  - A notice or summons provides information about the offence (or offences) that a person has been charged with, the location of the court, and the date and time they must appear in court.
  - After being issued with a notice or summons the person can remain living in the community while they wait for their case to be heard.
- Being held in custody by the police at a watch house or remand centre.
  - If someone is held in custody, they will either remain there until their court date or be granted bail by a court.
    - If a person is granted bail they can also live in the community while they wait for their case to be heard in court, however they may be subject to certain conditions.

Most criminal matters are first heard in the Magistrates Court. The Magistrates Court typically conducts the full court process for less serious crimes (called summary offences) and the pre-trial stage of the court process for more serious crimes (called indictable offences).<sup>10</sup> Many cases are finalised in the Magistrates Court, however, depending on the seriousness of the offence, some cases are committed to the District or Supreme Court for sentencing or trial.<sup>11</sup>

Depending on their circumstances and eligibility, adults may also be referred to a specialist court such as the Murri Court or the Drug and Alcohol Court. Some adults may be referred to Court Link to access case management and support to address factors relating to their offending. Other court programs available include the drug and alcohol diversion programs and the Domestic and Family Violence (DFV) Diversion Program.

In Queensland, adults are assumed to have legal capacity. Legal capacity can be understood as 'the ability of a person to make decisions for themselves and deal with their legal affairs'.<sup>12</sup>

An adult must have legal capacity to provide instructions to a lawyer and participate in mainstream court processes.

Some adults with cognitive disability may be found to be 'unfit for trial' or to have been of 'unsound mind' when the offence was allegedly committed. These circumstances may trigger a referral to the Mental Health Court, details of which are provided in the forensic system section of this overview.

---

<sup>7</sup> Queensland Police Service, *Prosecution contacts*, 2026, <<https://www.police.qld.gov.au/qps-corporate-documents/prosecution-contacts-case-conferencing>>.

<sup>8</sup> L Dowse, S Rowe, E Baldry & M Baker, *Police responses to people with disability*, research report commissioned by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2021.

<sup>9</sup> Dowse et al., *Police responses to people with disability*.

<sup>10</sup> Queensland Courts, *About the Magistrates Court*, <<https://www.courts.qld.gov.au/the-courts/magistrates-court/about-the-magistrates-court>>.

<sup>11</sup> Queensland Courts, *About the Magistrates Court*.

<sup>12</sup> Allens & Queensland Advocacy Incorporated, *Queensland Handbook for Practitioners on Legal Capacity*, 2014, p. 12.



If a person pleads guilty or is found guilty of an offence following a trial, a sentencing hearing will be held, and they will be sentenced in accordance with the *Penalties and Sentences Act 1992* (Qld). This may include a non-custodial sentence (for example a fine, a probation order or a community service order), or a custodial sentence (imprisonment). The magistrate or judge may also make additional orders such as banning orders, driver licence disqualification, non-contact orders, and restitution or compensation orders.<sup>13</sup>

A sentence may be given for the purpose of punishment, rehabilitation, deterrence, denunciation, community protection, or a combination of these purposes.<sup>14</sup> A person's 'intellectual capacity' is one of a number of factors and principles considered by a judge or magistrate.<sup>15</sup>

## Detention

A person who receives a custodial sentence and is required to spend time in a correctional centre will be taken into custody by Queensland Corrective Services (QCS).

Upon admission to a correctional centre, a prisoner completes an induction program where they are given information about the corrective services system, the correctional centre at which they are located, and the rules with which they must comply.<sup>16</sup>

Prisoners also undergo an Immediate Risk Needs Assessment (IRNA), which is used to identify any immediate risk factors and any issues that might need immediate intervention, as well as informing decisions about a prisoner's placement within the custodial facility.<sup>17</sup> The assessment also enables the identification of prisoners with needs and risk factors that are not immediate but require referral.

During their time in prison, people may be able to participate in education, rehabilitation and training to enable them to gain new skills, change behaviours related to their offending, and to prevent recidivism.<sup>18</sup>

Depending on their sentence and a range of other factors affecting eligibility, a prisoner may, at some stage, be eligible for parole. A parole order enables a person to return to the community, under the supervision of QCS, until their sentence has been completed.

People released on parole must meet certain conditions. If a person fails to meet these conditions, the conditions of the parole order may be changed, or the parole order may be suspended or cancelled, and the person may be required to return to prison.<sup>19</sup>

If a person is not granted parole, they are discharged and able to return to the community once their sentence has been served.

Some prisoners may be eligible for services that can support their transition from custody back to the community.

Figure 1 on page 25 illustrates some of the triggers leading to interaction with the criminal justice system and some of the actions and events that can occur as an adult progresses through the system as an alleged offender.

---

<sup>13</sup> Queensland Sentencing Advisory Council, *Queensland Sentencing Guide*, 2023, <[https://www.sentencingcouncil.qld.gov.au/\\_\\_data/assets/pdf\\_file/0004/572161/QLD-Sentencing-Guide.pdf](https://www.sentencingcouncil.qld.gov.au/__data/assets/pdf_file/0004/572161/QLD-Sentencing-Guide.pdf)>.

<sup>14</sup> *Penalties and Sentences Act 1992* (Qld) s 9.

<sup>15</sup> *Penalties and Sentences Act 1992* (Qld) s 9.

<sup>16</sup> Caxton Community Legal Centre, *Going to prison*, The Queensland Law Handbook, 2026, <<https://queenslandlawhandbook.org.au/the-queensland-law-handbook/offenders-and-victims/prisons-and-prisoners/going-to-prison>>.

<sup>17</sup> Queensland Corrective Services, *Custodial Operations Practice Directive, Offender pathways*, ver. 08, 22 April 2024.

<sup>18</sup> Queensland Government, *Rehabilitating offenders in custody*, 2026, <<https://www.qld.gov.au/justice/prison-and-detention/sentences-adult-offenders/rehabilitating-offenders-in-custody>>.

<sup>19</sup> Queensland Government, *Parole orders*, 2026, <<https://www.qld.gov.au/justice/prison-and-detention/sentences-adult-offenders/parole-orders>>.



## The Forensic System (Mental Health and Disability)

If a person is found not to have the ability to participate in court proceedings, or if they were not criminally responsible at the time of offending, they will either be discharged by the Magistrates Court or be referred to the Queensland Mental Health Court.

If they are found to be unfit for trial or of unsound mind, the Mental Health Court can make a Forensic Order to guide the person's next steps through the system.

There are two types of Forensic Orders which can be made – a Forensic Order (Mental Health) and a Forensic Order (Disability).

Both types of orders can be made as either an inpatient or community category order. If a person is issued with a Forensic Order (Mental Health), responsibility for implementation of the order lies with an authorised mental health service (AMHS) overseen by Queensland Health. If the order is an inpatient order, the adult will reside and be treated (or cared for) at an AMHS (normally a designated unit within a public or, in some cases, a private hospital).

If the order is community based, the adult is free to reside in the community but must abide by the conditions noted on the order, which could include regular treatment or potentially restrictions on things like places they can visit and their use of technology.

If a person is issued with a Forensic Order (Disability), the order's implementation is the responsibility of either an AMHS or the FDS (a unit operated by the Department of Families, Seniors, Disability Services and Child Safety (DFS DSCS)).

If the Forensic Order (Disability) is an inpatient order, the adult will reside and be cared for at either an AMHS or the FDS. Further information regarding the FDS can be found in the Public Advocate's forensic system (mental health and disability) discussion paper. If the Forensic Order (Disability) is community based, the adult is free to reside in the community but must abide by the conditions noted on the order. An AMHS is almost always responsible for the implementation of a community-based order (disability).

Regardless of the type of order or where a person lives, a Forensic Order is reviewed every six months by the Mental Health Review Tribunal (MHRT). A review of an order can also be requested by the person themselves or various government officials, including the Attorney-General. The MHRT can make decisions including whether to:

- Revoke an order (meaning that the order no longer applies to the person and they are free to reside in the community without restriction or treatment).
- Step-down an order (if the person is on a mental health related order) to what is known as a Treatment Support Order, which generally involves less oversight than Forensic Orders and allows for treatment in the community.
- Change the category of an order (inpatient or community).
- Authorise Limited Community Treatment, which works to transition people back to living in the community with appropriate treatment and care.

Figure 2 on page 26 illustrates the process associated with a person's mental health court and Forensic Order journey, and some of the actions and events that can occur as they progress through this part of the criminal justice system.

## Victims and Witnesses

When a person is a victim of crime in Queensland, their first interaction with the criminal justice system will likely be reporting the crime to police.

Reporting could take place at the crime scene (if police are in attendance) or potentially sometime later at a police station that the victim attends, or alternatively, when police visit them at another location (such as their home).



Once a statement is taken by the police, it is combined with other evidence to assist in determining whether there is sufficient information to charge an alleged offender with a crime.

Dependent on the nature and seriousness of the crime, proceedings will then transition to a court setting for a hearing.

If the defendant concedes the basic facts of the case, acknowledges they have caused harm, and takes responsibility for their actions, Adult Restorative Justice Conferencing could take place to resolve the matter.

If the defendant pleads not guilty to the criminal charge or charges a trial will follow.

During a trial, the victim may be called upon to appear and provide details of the crime to the court, either in person or via video link, should certain circumstances apply.

The victim can also be cross-examined by the alleged offender's legal representatives, who may challenge their recollection of events or details of the crime.

Should the defendant be found or plead guilty to the criminal charges filed against them, they will be sentenced by the magistrate or judge presiding over the case.

At the time of sentencing, a victim of crime may also be able to prepare and have submitted what is known as a victim impact statement. This is a statement about how the crime has affected the life of the victim. It assists the court to better understand the impact of the crime before a sentencing decision is made.

Following sentencing, a victim may be entitled to certain information about an offender, including where they are located and when they are released from custody.

When a person is a witness to a crime, their interactions with the criminal justice system may also commence with a report to the police, either at the scene of the crime or sometime later at another location like a police station or their home if visited by police. They may also be contacted by the police to make a statement if they are noted by the victim as a witness to the alleged offence.

Like the victim's statement, the information provided by a witness is also used by the police to determine if evidence is sufficient to charge a person with a crime.

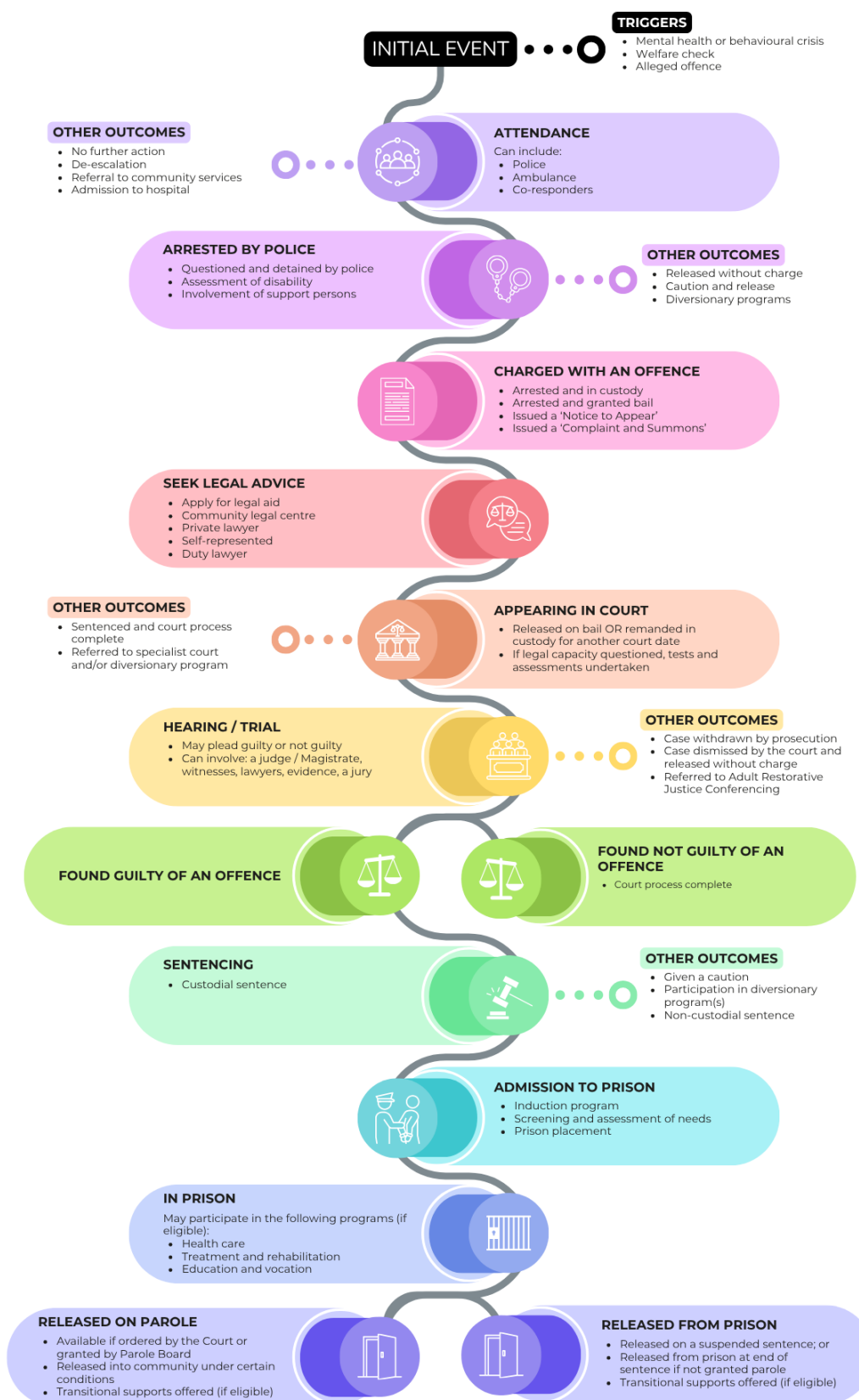
Should a defendant be charged with a crime and the matter proceed to a trial, a witness may be called to give evidence at the trial by either the defence or the prosecution. Legal representatives from both the prosecution and defence can ask questions of the witness, to confirm or challenge elements of the statement that they originally made to the police.

Once this component of a criminal trial is complete, the witness's contact with the criminal justice system normally concludes, with no further action necessary.

Figure 3 on page 27 provides an example of the process that a victim or witness may progress through within the criminal justice system.

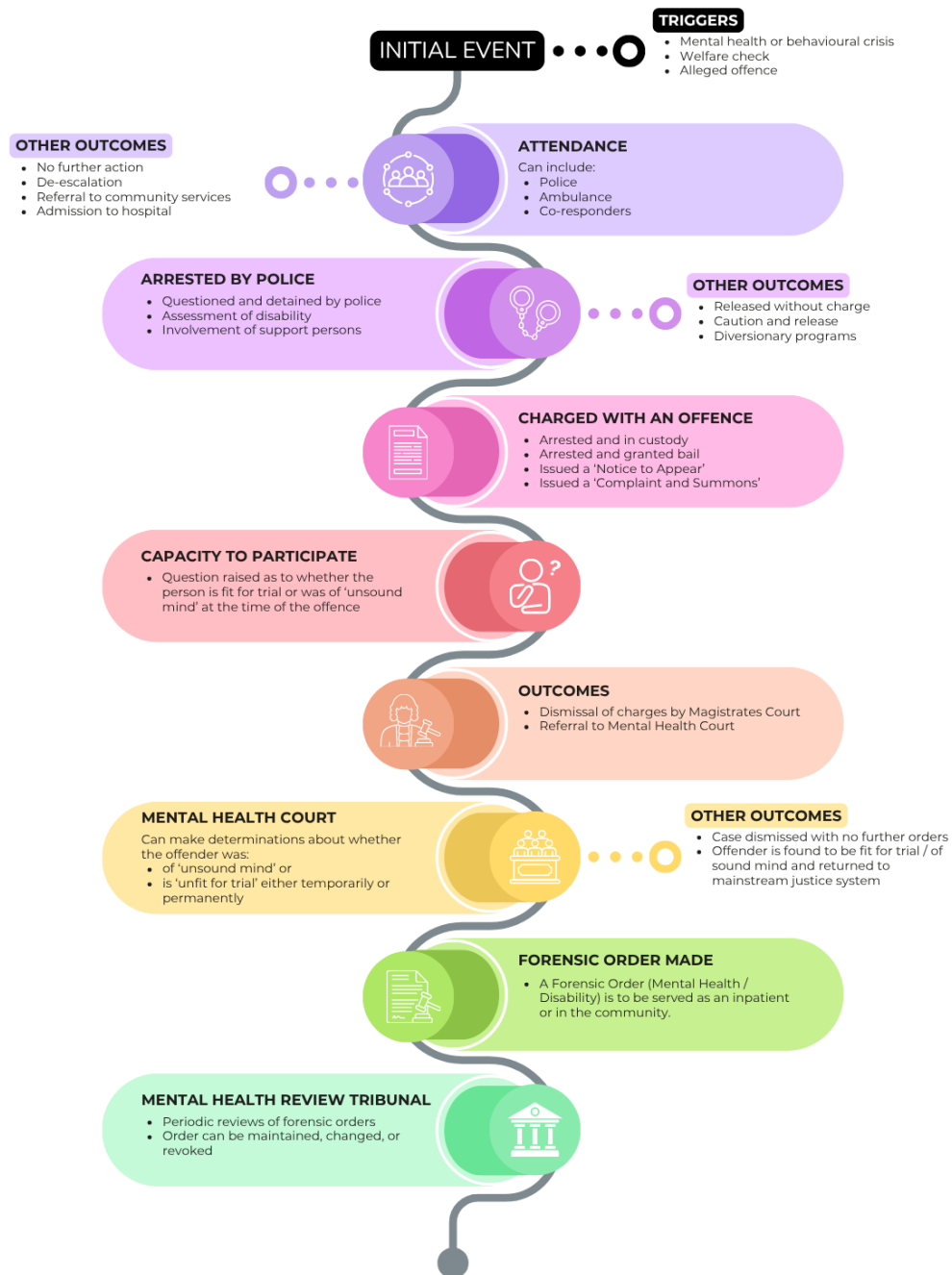


**Figure 1. Summary of a potential pathway through the mainstream criminal justice system in Queensland for an alleged offender.**



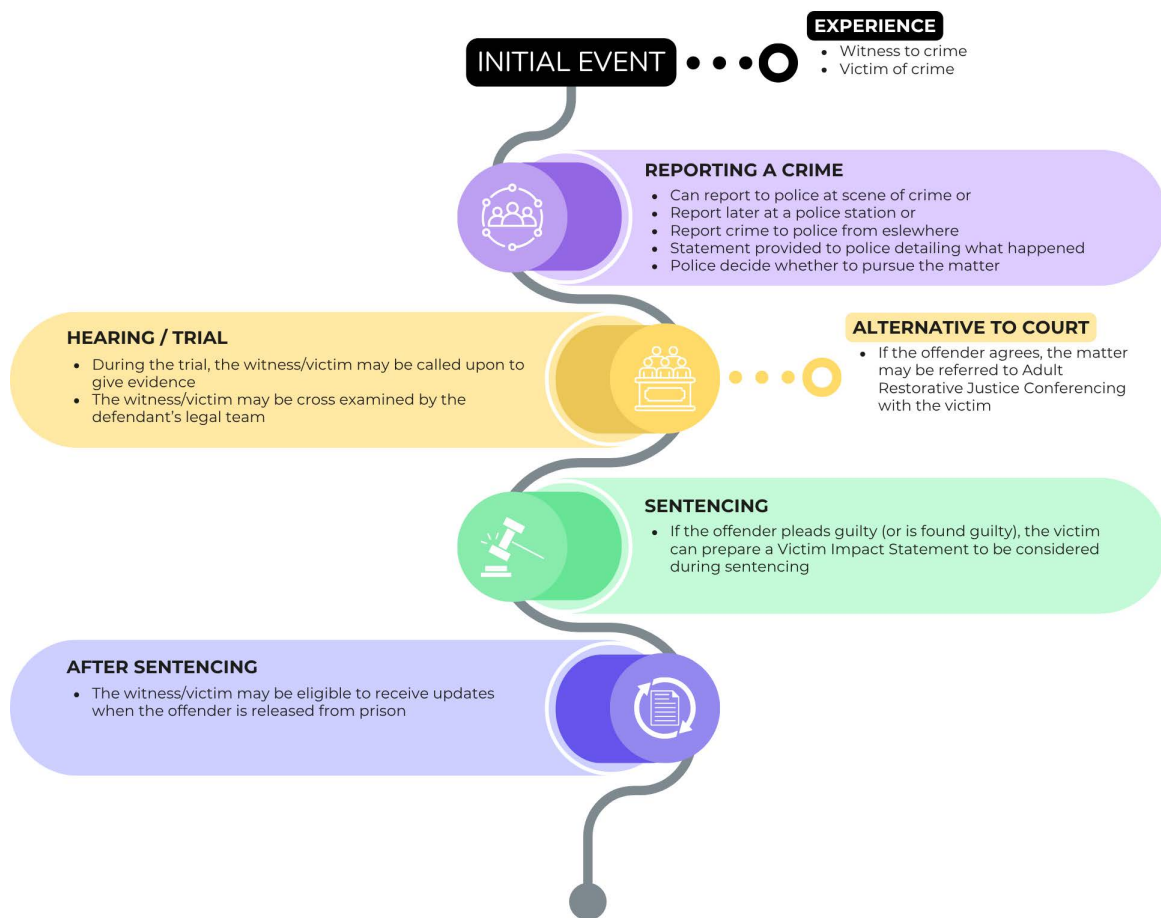
Please note that this diagram aims to provide a broad overview of a possible journey for general background information only, individual cases may be more complex and vary in terms of processes and outcomes.

**Figure 2. Summary of a potential pathway through the forensic system (mental health and disability) in Queensland for an alleged offender.**



Please note that this diagram aims to provide a broad overview of a possible journey for general background information only, individual cases may be more complex and vary in terms of processes and outcomes.

**Figure 3. Summary of a potential pathway through the criminal justice system in Queensland for a victim of, or witness to, crime.**



Please note that this diagram aims to provide a broad overview of a possible journey for general background information only, individual cases may be more complex and vary in terms of processes and outcomes.

## The Public Advocate's report

This report describes the approach taken in the course of, and presents the findings and recommendations from, the Public Advocate's criminal justice system project.

It is divided into three sections:

1. A description of the methodology that was undertaken to gather information and feedback relevant to the project, including the development of five discussion papers, stakeholder consultation and consultation with adults with lived experience of disability.
2. Summaries of each discussion paper. This section also includes a summary of the feedback received from stakeholders during consultations in relation to each discussion paper. A copy of the discussion papers can be found on the Public Advocate's website at <https://www.publicadvocate.qld.gov.au/our-advocacy/justice-and-human-rights/adults-with-cognitive-disability-in-the-criminal-justice-system>.
3. A synthesis of the critical issues heard across the course of the project. This includes the Public Advocate's recommendations to improve access to justice for adults with cognitive disability.

# Methodology

This project aimed to explore the issues faced by adults with cognitive disability when they interact with the criminal justice system, and identify opportunities for reform to ensure that they are able to participate, have equal access to justice, and have their human rights upheld.

This reflects the aims of the *Human Rights Act 2019* (Qld), which outlines the rights of all Queenslanders, including:

- 'Recognition and equality before the law';<sup>20</sup>
- 'Protection from torture and cruel, inhuman or degrading treatment';<sup>21</sup>
- 'Humane treatment when deprived of liberty';<sup>22</sup>
- 'Fair hearing';<sup>23</sup> and
- 'Rights in criminal proceedings'.<sup>24</sup>

It also aligns with the rights of victims under the Charter of Victims' Rights,<sup>25</sup> which details the rights of victims of violent crime, including:

- the right to appropriate treatment by government and non-government agencies;
- their rights in the criminal justice system;
- their rights when the offender is imprisoned; and
- the right to make a complaint to the relevant agency or to the Victims' Commissioner.<sup>26</sup>

'Safety, rights and justice' is also a key outcome area under Australia's Disability Strategy 2021-2031, which includes the policy priorities that 'people with disability have equal access to justice'<sup>27</sup> and that 'the criminal justice system responds effectively to the complex needs and vulnerabilities of people with disability'.<sup>28</sup>

This report, and the reform recommendations made, was informed by:

- reviews of the existing literature and examination of relevant legislation and policies, to inform the development of five **discussion papers**; and
- extensive **stakeholder consultation**, in multiple formats, that occurred over a number of years and was guided by the discussion papers developed for this project.

## Discussion papers

The criminal justice system, including the system in Queensland, has been the subject of many previous studies and reviews, the most prominent of which in recent times was conducted by the Disability Royal Commission.

To inform this project, desktop reviews of relevant literature and previous reviews of the criminal justice system, as well as a review and analysis of relevant legislation and policies, were undertaken. The aim of this work was to understand the current legal and policy landscape in Queensland, the research and other work that had been undertaken to date, previous findings, and areas that had been identified for potential improvement.

---

<sup>20</sup> *Human Rights Act 2019* (Qld) s 15.

<sup>21</sup> *Human Rights Act 2019* (Qld) s 17.

<sup>22</sup> *Human Rights Act 2019* (Qld) s 30.

<sup>23</sup> *Human Rights Act 2019* (Qld) s 31.

<sup>24</sup> *Human Rights Act 2019* (Qld) s 32.

<sup>25</sup> Please note that the Charter of Victims' Rights is currently being reviewed by the Victims' Commissioner.

<sup>26</sup> The State of Queensland (The Office of the Victims Commissioner) Commissioner, *Victims' rights in Queensland*, <<https://www.victimscommissioner.qld.gov.au/Charter-of-Victims-Rights>>.

<sup>27</sup> Commonwealth of Australia (Department of Social Services), *Australia's Disability Strategy 2021-2031, 2024 update: Building a more inclusive Australia*, 2024, p. 26.

<sup>28</sup> Commonwealth of Australia (Department of Social Services), *Australia's Disability Strategy 2021-2031, 2024 update: Building a more inclusive Australia*, p. 27.



Given the significant size and complexity of the Queensland criminal justice system, five discussion papers were developed that summarised this work. The papers focused on critical components of the system including:

- policing;
- courts;
- the forensic system (mental health and disability);
- detention; and
- victims and witnesses.

The discussion papers include:

- A brief summary of a 'potential journey' through the relevant component of the criminal justice system for an adult with cognitive disability, which described the steps that a person may go through as they progress through the system.
- A summary of the issues and challenges identified in previous literature, inquiries and reports.
- A summary of some of the current approaches and programs relevant to people with cognitive disability as they interact with the criminal justice system.
- A summary of some of the recommendations that have been made in previous reports to acknowledge the significant amount of work that has already been undertaken in this space.
- A discussion and analysis of key legislation and policies relevant to each topic and identification of potential issues.
- Key questions to guide further discussion during the stakeholder consultations.

A summary of each paper is provided in the next section of this report.

This approach enabled detailed discussion and exploration of each critical component of the system. However, it is acknowledged that many issues span the system as a whole and that people's experiences can vary significantly. Furthermore, as was noted by the Disability Royal Commission, many people with cognitive disability experience multiple forms of disadvantage that can lead to a cycle of reoffending and incarceration.<sup>29</sup> As a result, a person's experience may not reflect these clear categories.

This has been considered in the development of recommendations, which are provided on a system-wide and sector-specific basis.

## Stakeholder consultation

This report was also informed by discussions and consultation that the Public Advocate has undertaken over a number of years. This has included the formal consultation processes described below, as well as more informal interactions about this topic during disability sector engagement and work on cognate projects, particularly in the adult safeguarding, supported accommodation, restrictive practices and mental health fields.

The formal consultation elements included a series of roundtables, discussions, site visits, presentations and other feedback.

All of the feedback provided by stakeholders and adults with lived experience is acknowledged and appreciated, and was considered by the Public Advocate in the development of reform recommendations included in this report. However, the conclusions and recommendations made do not necessarily reflect the views of all stakeholders.

---

<sup>29</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 8: Criminal justice and people with disability'.



## Roundtables

The Public Advocate conducted a total of ten roundtables on the issues, opportunities for improvement, and critical questions noted within each discussion paper. The aim of these roundtables was to bring together groups of people from different agencies and organisations to discuss their views and experiences and generate ideas for potential reform.

The ten roundtables were held in-person in Brisbane, Cairns and Townsville, and online (see the table below).

| Roundtable/ discussion                            | Date                           |
|---------------------------------------------------|--------------------------------|
| Policing consultation - Brisbane                  | 17 <sup>th</sup> June 2024     |
| Policing consultation - Brisbane                  | 20 <sup>th</sup> June 2024     |
| Policing consultation - Brisbane                  | 3 <sup>rd</sup> July 2024      |
| Policing consultation - Online                    | 5 <sup>th</sup> September 2024 |
| Courts consultation - Brisbane                    | 4 <sup>th</sup> March 2025     |
| Courts consultation - Brisbane                    | 8 <sup>th</sup> April 2025     |
| Criminal justice system consultation - Townsville | 13 <sup>th</sup> May 2025      |
| Criminal justice system consultation - Cairns     | 14 <sup>th</sup> May 2025      |
| Forensic system consultation - Brisbane           | 4 <sup>th</sup> September 2025 |
| Detention consultation - Brisbane                 | 10 <sup>th</sup> March 2026    |

The roundtables were attended by representatives from a range of agencies and organisations with expertise in the Queensland criminal justice system, including the legal, advocacy, emergency services, guardianship, community, mental health and disability sectors, while relevant government departments were also represented.

Some of the consultations focused on policing also included the use of hypothetical scenarios developed for the purpose of this project. The aim of these hypothetical scenarios was to generate discussion relating to whether stakeholders had seen or experienced those situations before, and what would typically happen to people in those situations.

While the roundtables were often focused on a single component of the criminal justice system, attendees were also invited to provide feedback on other components of the system or the system more broadly.

A list of the 51 organisations and agencies that were involved in consultations or discussions can be found in Appendix 1. Many of these agencies and organisations participated in multiple roundtables and discussions to provide input regarding different components of the criminal justice system in Queensland.

## Site visits

The Public Advocate undertook a number of site visits relevant to this project, which included in-depth discussions with senior staff members and relevant staff teams. This included visits to:

- Lotus Glen Correctional Centre;
- Townsville Correctional Centre;
- The Forensic Disability Service (two visits);
- The Park Centre for Mental Health Treatment, Research and Education (two visits);
- Authorised mental health services (AMHSs) including those in Rockhampton, Cairns (two visits), Townsville (two visits), Ipswich and the Baillie Henderson Hospital.

## Other discussion and feedback

In addition to the roundtables, stakeholders were also invited to provide information and feedback via other methods to best suit their preferences and requirements. This included individual meetings with the Public Advocate and written submissions or emails.



Given the range of current activities and consultations relating to victims of crime that are being undertaken by other Queensland Government agencies, and given that some organisations had already spoken about issues relevant to victims and witnesses during previous discussions, more targeted consultation was undertaken in relation to this topic.

Stakeholders were sent the relevant discussion paper and invited to provide feedback in the form of an email, written submission, or a meeting with the Public Advocate.

Many of the issues identified for those accused of, or charged with, a crime, were also relevant to victims or witnesses with cognitive disability.

The Public Advocate also had the opportunity to present to, and engage with:

- Staff members in the First Nations Justice Office;
- Independent Patient Rights Advisers;
- participants at the March 2025 'Barriers to reintegration for people with an intellectual disability who are at risk of offending' forum, RMIT and Victorian Department of Families, Fairness and Housing (Melbourne);
- two groups of forensic mental health workers (in Townsville and Brisbane);
- Queensland Law Society's Human Rights and Public Law Committee; and
- members of the Down Syndrome and Intellectual Disability Queensland Advisory Group.

The Public Advocate also holds regular discussions with:

- the Chief Psychiatrist;
- the Director of Forensic Disability;
- the Public Guardian;
- the Public Trustee; and
- advocacy and other agencies including Queensland Advocacy for Inclusion (QAI), Aged and Disability Advocacy Australia, Caxton Legal Centre, Queensland Human Rights Commission, Mental Health Commission, Queensland Legal Aid, Queensland Law Society committees (including the Health and Disability Law Committee and the Elder Law Committee) and the Queenslanders with Disability Network (QDN).

A number of separate discussions were also held with relevant government agencies and other organisations and individuals regarding current practices and challenges within the Queensland criminal justice system to inform the development of the discussion papers, and this final report. This included engagement with statutory office holders (in addition to those referenced above), academics, senior bureaucrats, and retired judges, among others.

While some of the above-mentioned consultation processes involved interactions with people with disability, including some of the roundtable discussions, research undertaken for this project also involved more targeted consultations with adults with cognitive disability who had previous experience of, or knowledge about, the criminal justice system.

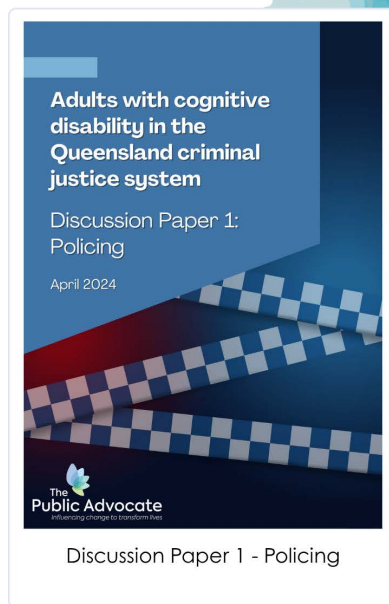
This included four individual interviews with people who had direct experience with elements of the criminal justice system, and a meeting with a panel of experts with lived experience of disability. These discussions were organised by QDeNgage, who supported a trauma-informed approach to the involvement of adults with disability who felt comfortable discussing what can be a very distressing topic.

The Public Advocate also spoke at, and participated in, a workshop delivered by QDN and the Department of Justice (DOJ) as part of the work being undertaken in relation to the Accessible Courts and Tribunals initiative.

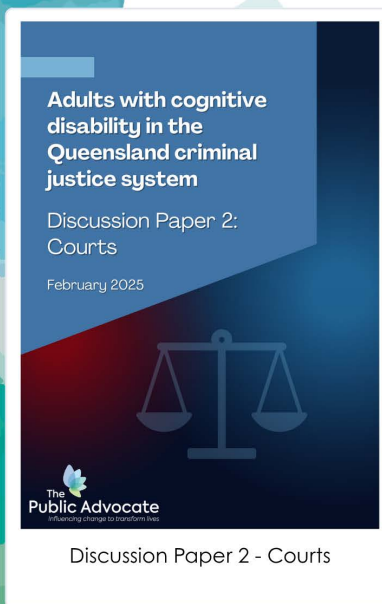
These discussions included feedback about people's views on, and experiences of, the criminal justice system, ideas for improvement, and feedback on the Public Advocate's proposed recommendations.



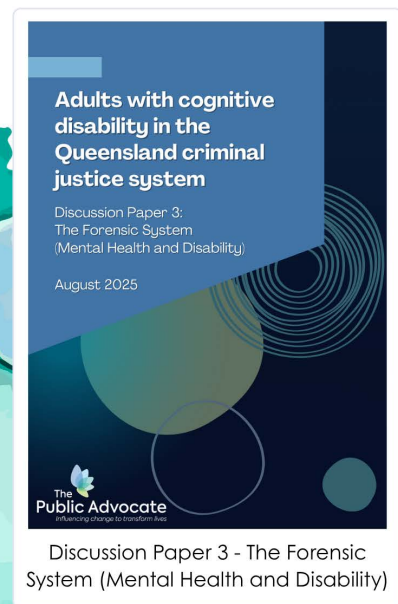
# Discussion papers



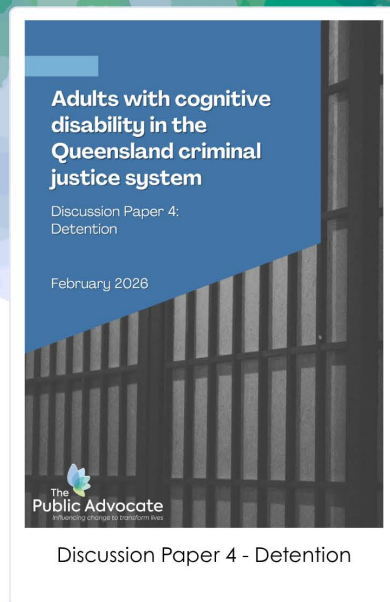
Discussion Paper 1 - Policing



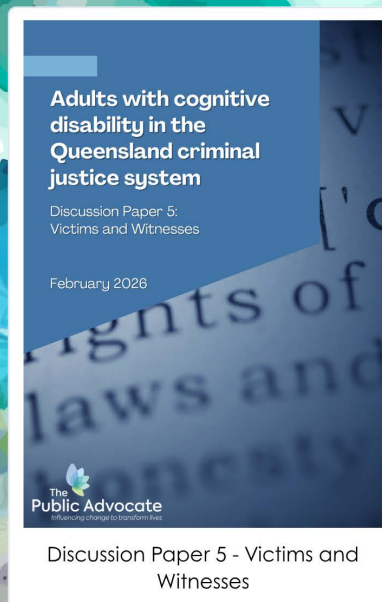
Discussion Paper 2 - Courts



Discussion Paper 3 - The Forensic System (Mental Health and Disability)



Discussion Paper 4 - Detention



Discussion Paper 5 - Victims and Witnesses

These discussion papers are available on the Public Advocate's website:  
<https://www.publicadvocate.qld.gov.au/our-advocacy/justice-and-human-rights/adults-with-cognitive-disability-in-the-criminal-justice-system>.

## Discussion paper 1: Policing

The first discussion paper, which focused on policing, was published in April 2024.

The paper provided an overview of issues associated with interactions between police and adults with cognitive disability who are alleged offenders, including:

- a lack of data on police interactions with people with cognitive disability;
- police responses to mental health and behavioural issues;
- negative attitudes and stigma associated with cognitive disability;
- challenges with the identification and recognition of disability;
- issues with access to support during police interviews; and
- police use of force.

The paper also included a discussion on:

- key policies and legislation relevant to policing in Queensland, including the *Police Powers and Responsibilities Act 2000* (Qld) and the Queensland Police Service Operational Procedures Manual;
- some of the key recommendations that have been made, or actioned, following previous studies, inquiries and reports.

The policing discussion paper also identified a number of programs and initiatives that are currently operating that are relevant to the interactions between people with cognitive disability and police.<sup>30</sup> These include:

- the QPS Disability Service Plan 2023-2026;
- the QPS Mental Health Strategy 2023-27;
- the QPS Domestic, Family Violence and Vulnerable Person Command;
- the Mental Health Intervention Program;
- the Police Communications Centre Mental Health Liaison Service;
- the Queensland Fixated Threat Assessment Centre;
- police training, including training for new recruits at the Queensland Police Service Academy;
- co-responder programs;
- Police Advice Intervention Plans; and
- diversion and referral programs.

The paper posed the following questions for further discussion:

1. What changes would improve interactions between Queensland Police and adults with cognitive disability?
2. Are reforms required to the *Police Powers and Responsibilities Act 2000* (Qld) and the Queensland Police Operational Procedures Manual to improve the way police interact with adults with cognitive disability?
3. What First Nations policing reforms, and alternatives to policing, should be considered for adults with cognitive disability in Queensland?
4. How can adults with cognitive disability be better supported during police interviews?
5. In what situations involving adults with cognitive disability might alternatives to a policing response be appropriate? What might those alternatives involve?

---

<sup>30</sup> Please note that since the release of this discussion paper, changes have been made, or are being made, to some of the programs and initiatives discussed including the QPS Domestic, Family Violence and Vulnerable Person Command, diversion programs, and the QPS Disability Service Plan (revised August 2025).



## Discussion paper 2: Courts

The second discussion paper, focusing on the Queensland court system, was released in February 2025.

This paper explored the court system challenges experienced by adults with cognitive disability who have been charged with a crime.

This paper did not include a discussion of the Mental Health Court, which was addressed in the paper on the forensic system (mental health and disability).

Issues discussed within the paper included:

- the accessibility of courts and court processes;
- a lack of appropriate supports and reasonable adjustments;
- difficulties associated with the identification and recognition of disability;
- difficulties with access to bail and breaches of bail conditions;
- determination of legal capacity;
- challenges with access to legal advice and representation;
- sentencing and diversionary options; and
- the lack of data available on the outcomes and experiences of adults with cognitive disability who move through the court system.

It also included a summary of key policies and legislation:

- the Queensland Handbook for Practitioners on Legal Capacity;
- the Criminal Law Duty Lawyer Handbook;
- the Director of Public Prosecutions Director's Guidelines;
- the Equal Treatment Benchbook;
- the *Bail Act 1980* (Qld); and
- the *Penalties and Sentences Act 1992* (Qld).

Within the discussion paper, a number of current government programs and initiatives were discussed including:

- the piloting of a disability stream as part of the Court Link program;
- work being undertaken to modernise courts, including upgrades to court houses and technology;
- the development of a Courts Accessibility Strategy;<sup>31</sup>
- Adult Restorative Justice Conferencing;
- Drug and Alcohol Diversion Programs;
- Specialist domestic and family violence courts;
- the Queensland Intermediary Scheme (QIS);
- the Murri Court;
- Community Justice Groups; and
- work being led by the First Nations Justice Office (FNJO), including the implementation of the *Better Justice Together: Queensland's Aboriginal and Torres Strait Islander Justice Strategy 2024-2031*, to address the overrepresentation of Aboriginal and Torres Strait Islander people in the Queensland criminal justice system.

Recommendations from previous reports, studies, and inquiries relevant to the courts were also discussed.

The following questions were posed for further discussion across the stakeholder consultations:

---

<sup>31</sup> Please note: The Department of Justice approach to improving the accessibility of the courts has changed since the publication of the courts discussion paper and will be discussed further on page 75.



1. How might court processes for criminal matters be made more accessible for adults with cognitive disability?
2. Should intermediaries be made available to all adults with significant cognitive disability who are charged with serious offences?
3. What other supports should be made available to adults with cognitive disability to enable them to better understand and participate in court processes?
4. Are there particular reforms that would make court processes more accessible to First Nations adults with cognitive disability?
5. What evidenced-based diversionary programs for adults with cognitive disability should be considered in Queensland?

## Discussion paper 3: The forensic system (mental health and disability)

In August 2025, the third discussion paper was released. This paper focused on issues experienced by adults with cognitive disability in the forensic system, including those who are referred to the Mental Health Court and placed under a Forensic Order.

Some of the critical issues identified included:

- the effectiveness of tests to determine fitness for trial;
- detention without trial;
- the nature of Forensic Orders (Mental Health and Disability), which may include indefinite detention;
- the fragmentation of the current forensic system (across multiple government agencies);
- barriers to transitioning back into the community;
- the institutionalisation of those on inpatient orders, including those at the FDS;
- the potential misuse of regulated behaviour controls;
- challenges associated with AMHSs being responsible for the oversight of the majority of people on inpatient and community Forensic Orders (Disability);
- challenges with transitioning back to the community following inpatient treatment;
- elements of the Forensic Order review process; and
- compliance monitoring associated with the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

The paper also discussed recommendations for improvement to the system identified by previous reports and reviews, and some of the strategies that have been implemented.

The paper also summarised key policies and legislation relevant to this system, including:

- the *Mental Health Act 2016* (Qld);
- the *Forensic Disability Act 2011* (Qld);
- the *Criminal Code 1899* (Qld);
- policies from the Office of the Chief Psychiatrist; and
- policies from the Director of Forensic Disability.

The key questions used to guide further discussion included:

1. What reforms are required to improve Queensland's Forensic System (Mental Health and Disability)?
2. Should greater support be provided to enable people to be deemed fit to stand trial. If so, what form should that support take, and who should provide it?
3. Should nominal terms be applied when a person is detained following a finding that they are unfit to stand trial or are not guilty by reason of being of 'unsound mind'?
4. Should new governance arrangements be developed for people on Forensic Orders (Disability), most of whom have their treatment and support (in inpatient or community settings) provided by authorised mental health services?



## Discussion paper 4: Detention

The fourth discussion paper, which discussed detention in Queensland, was released in February 2026. This paper focused on the issues experienced by adults with cognitive disability who have been found guilty of an offence and receive a custodial sentence. This includes challenges that may be experienced by adults with cognitive disability during their time in a correctional centre (prison) and as they transition back to the community.

Key issues identified within the paper include:

- inadequate identification and recognition of cognitive disability and support needs;
- limited access to reasonable adjustments and disability-related supports;
- limited access to health and mental health services;
- experiences of harassment, violence and abuse;
- the use of separate confinement;
- limited access to rehabilitation, education and training programs;
- challenges accessing parole;
- issues with the intersection between corrective services and the National Disability Insurance Scheme (NDIS); and
- challenges with the transition from a correctional centre to the community.

The paper also summarised key policies and legislation relevant to detention including:

- the *Corrective Services Act 2006* (Qld);
- the QCS Custodial Operations Practice Directives;
- the *Inspector of Detention Services Act 2022* (Qld); and
- the Inspection Standards for Queensland prisons.

The Public Advocate also liaised with QCS in relation to policies on community-based orders. QCS's Operational Practice Guideline, which is a set of policies and guidelines on community-based orders, is not currently publicly available.

However, to inform the development of the Public Advocate's detention discussion paper, QCS released two of the operational guidelines with particular relevance to adults with cognitive disability, the 'Admission and Induction' and 'Case Management' guidelines.

There are a number of plans, strategies and programs relevant to adults with cognitive disability in corrective services or transitioning back to the community, which were highlighted within the discussion paper. These include:

- the QCS Disability Service Plan 2022-2025 (please note: this plan has recently been updated);
- the QCS Mental Health Strategy 2022-2027;
- the QCS Disability Services Team;
- legal advice and assistance available through Legal Aid Queensland and the Prisoners' Legal Service;
- the Women's Reintegration Service;
- the Men's Reintegration Service;
- the Post Release Supported Accommodation Program;
- the Next Step Home Program;
- the Individual Recovery Support-Transition from Correctional Facilities Program;
- Official Visitors; and
- the Inspector of Detention Services.

The key questions identified within the paper to guide further discussion included:

1. Are current cognitive disability screening processes adequate for adults entering detention?
2. Do adults with cognitive disability in detention have appropriate access to disability, mental health and general health services and support?



3. How might current rehabilitation, education and training offerings be improved for adults with cognitive disability who are in detention?
4. Is the treatment of adults with cognitive disability who are in detention adequately monitored?
5. Are specific initiatives required to address the treatment and rehabilitation prospects of First Nations adults with cognitive disability who are in detention?
6. Are current community-based correction order requirements (e.g., Probation, Community Service, Court/Board Ordered Parole) and services suitably adapted for adults with cognitive disability?

## Discussion paper 5: Victims and witnesses

The final discussion paper, published in February 2026, focused on issues experienced by adults with cognitive disability who are victims of, or witnesses to, crime.

The paper explored a number of issues including:

- The overrepresentation of adults with cognitive disability as victims of crime, including those living in private homes as well as shared home environments.
- A reluctance to report incidences of crime due to the fear of not being believed, communication challenges, a lack of awareness of rights, and limited access to alternative secure and accessible accommodation.
- Adults with cognitive disability being viewed as lacking credibility and not being believed when they report a crime.
- A lack of identification and recognition of support needs during criminal justice processes for victims and witnesses with cognitive disability, including during police interviews, court processes, and in detention, sentencing and post-release settings.

The paper also included a summary of key policies and legislation relevant to victims of, and witnesses to, crime in Queensland, including:

- the *Evidence Act 1977* (Qld);
- the *Penalties and Sentences Act 1992* (Qld);
- the *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld);
- the *Corrective Services Act 2006* (Qld); and
- the *Mental Health Act 2016* (Qld).

It also highlighted the findings and recommendations from relevant previous reviews and reports, as well strategies that have been developed to address some of the concerns identified.

The questions posed for further discussion included:

1. To what extent are adults with cognitive disability over-represented as victims of crime in Queensland?
2. What can and should be done to address this?
3. What reforms are required to ensure that adults with cognitive disability who are victims of, or witnesses to, crime are:
  - a. encouraged to report their experiences;
  - b. meaningfully heard; and
  - c. adequately supported before, during and after their involvement with the criminal justice system?



# Stakeholder feedback

The feedback provided by stakeholders throughout the consultations and discussions held as part of this project identified challenges across the criminal justice system and reiterated many of the issues highlighted in the discussion papers. Stakeholders also provided examples of situations they had seen occur in Queensland, initiatives and approaches that were working well, and opportunities for improvement.

This feedback is summarised below.

## Policing

QPS is typically a person's first point of contact with the criminal justice system, whether they are a victim of crime, a witness, or a suspected offender. This was seen as a critical interaction for setting the tone for a person's experience of the criminal justice system, as well as an opportunity to prevent engagement with the criminal justice system through de-escalation and diversion.

### Challenges with emergency responses to mental health and behavioural issues

It was noted that some police-based responses to adults with cognitive disability can serve to escalate, rather than deescalate a situation. This was a particular concern for police responses relating to mental health issues or behaviours related to a person's disability.

A number of stakeholders believed that police did not receive sufficient training to enable them to identify and respond appropriately to adults with cognitive disability, given the frequency of interactions with this cohort.

Police may also misinterpret behaviours related to cognitive disability, for example interpreting behaviours as non-compliance or aggression. This can affect the response of police and serve to further escalate the situation.

These issues can result in a person being charged with an offence in situations where the initial call was for assistance, rather than related to a crime (e.g., a welfare check, absence from home, or a mental health or behavioural crisis).

Stakeholders also noted that a lack of appropriate disability-related supports and the lack of skills in de-escalation of some support workers can lead to police being called in situations where this could have been avoided.

### Respectful interactions

Stakeholders, and in particular stakeholders with lived experience of disability, emphasised the importance of respectful interactions between police and people with cognitive disability. People with lived experience provided examples of situations that they had been in, or that people they knew had been in, where they had felt disrespected, not listened to, and treated unfairly by police. This issue was reported in relation to people with cognitive disability who were victims of crime as well as those who were suspected perpetrators.

One stakeholder with lived experience of disability noted that even small changes like police asking a person their name and then referring to them by name during the interaction could make a difference.

For some people, poor experiences with police had led to a distrust of police and the criminal justice system more broadly. It could also result in people feeling reluctant to engage with police in the future, and an avoidance of these interactions, which is a particular concern for people with cognitive disability who are disproportionately represented as victims of crime.



## Identification of cognitive disability

Police may have difficulty identifying cognitive disability. They may also find it challenging to distinguish between behaviours related to cognitive disability and behaviours related to substance use.

This can limit access to necessary supports and adjustments for people with cognitive disability, or diversion from the criminal justice system where appropriate.

## Issues with timely access to relevant information

Access to information about a person, including information about their disability, supports, and effective ways to engage with a person, were often considered beneficial, but not always readily available to QPS.

QPS uses flags in its system, QPRIME, which can provide important information to police officers when they are attending a call out, however these flags are often focused on safety issues and can be quite broad.

QPRIME is incident-based, so a police officer has to retrieve each incident on a person's record to find out more information, which can make it difficult to access important information quickly.

Stakeholders also noted the importance of balancing the need for information about a person with the need for privacy and consent. There were also concerns that even if the information was provided with the intention of enabling better responses and support for people with cognitive disability, that this information could also be used against them.

## A lack of access to support for adults with cognitive disability

Adults with cognitive disability are entitled to have a support person present during police interviews.<sup>32</sup> However, access to this support may not always be provided due to police not identifying that a person has a cognitive disability, not providing this support, or encouraging a person to speak to them rather than waiting for a support person to arrive.

People with cognitive disability may be reluctant to identify as having a disability or may not know about their right to access support. They may also have difficulty advocating for themselves and asking for a support person.

Stakeholders also discussed the lack of appropriate supports for people with cognitive disability within the community more broadly, particularly in rural and remote areas. This was considered to be a relevant factor as stakeholders noted that having appropriate supports in place could help to prevent unnecessary interactions with police.

## Prevention

Stakeholders also noted the importance of efforts to prevent people with cognitive disability becoming involved in the criminal justice system.

As noted above, a lack of access to appropriate disability-related services and supports was thought to be a contributing factor to unnecessary engagement with the criminal justice system.

Stakeholders also described programs and situations where police were able to interact with people with cognitive disability or receive information about how to engage appropriately with individuals to help prevent situations from escalating into criminal offences.

They also described a lack of, or limited use of, diversionary options.

---

<sup>32</sup> Police Powers and Responsibilities Act 2000 (Qld) s 422.



The prevention of further criminal activity, or recidivism, was also discussed by stakeholders. In particular, they noted the lack of appropriate programs and supports, and the lack of clarity around the types of supports that can be funded by the NDIS.

## Opportunities for improvement

Stakeholders identified a number of potential opportunities for improvement, including:

- Improving access to supports for people with cognitive disability during police interviews, noting that any new program would also need to operate in rural and remote areas.
- Improving access to independent advocacy services.
- Considering how Community Justice Groups, which are a valuable source of information and support for First Nations peoples, may be able to assist with de-escalation of behaviours and community reintegration.
- Considering alternative models when responding to mental health and/or disability-related incidents.
- Delivering additional training for police to ensure appropriate responses to people with cognitive disability, including training that is co-designed and co-delivered by people with cognitive disability.
- People with cognitive disability, their supporters and/or service providers providing individualised information to the police about effective ways of engaging with people with cognitive disability who may be at particular risk of interactions with police. This could include contact details for a support person.
- Exploring further diversionary options and supporting and encouraging police officers to use these, where appropriate.
- Wrap-around services for people with cognitive disability to help prevent further interactions with the criminal justice system.
- Involving people with lived experience of disability in the development and implementation of any reforms (this was raised in relation to all aspects of the criminal justice system).



# Courts

Stakeholders discussed a range of issues relating to the courts that affect accessibility and the ability of a person with cognitive disability, whether they are a victim, witness or defendant, to participate in proceedings, understand the process and outcomes, and to receive a fair trial.

The stakeholder feedback summarised below relates primarily to navigating the 'mainstream courts' including the Magistrates and District Courts. Feedback about the Mental Health Court and MHRT is discussed within the forensic system section of this report.

## Identification and assessment of disability

Similar to other stages of the criminal justice system, identification of disability and/or the support needs of people navigating the court system is relevant to ensuring that a person receives appropriate supports and adjustments to enable them to understand and fully participate in the process.

During court processes, identification of a person's potential disability is also particularly relevant to understanding a person's legal capacity, and may inform their legal defence.

However, stakeholders indicated that access to relevant assessments can be challenging. There can be long waiting times, and it can be difficult to obtain funding for these assessments. Adults with cognitive disability may also be reluctant to self-identify or may not be aware of, or able to effectively communicate about, their support needs.

Stakeholders also noted that when assessments are conducted, they are often for a specific purpose, so care must be taken to ensure that interpretation is appropriate. For example, assessments at this stage are often focused on legal capacity, and so may not provide information about the types of support that a person requires more broadly.

Stakeholders also highlighted that, even where a person's disability or support need has been identified by police, this information is not necessarily passed on to the courts.

## Bail

Adults with cognitive disability may be less likely to be granted bail than those who do not have a cognitive disability due to challenges associated with accessing appropriate supports and housing. Access to services can be particularly challenging for people living in rural and remote areas, creating further disadvantage.

Stakeholders noted that people with cognitive disability who are granted bail may not understand their bail conditions, or may have bail conditions with which they cannot comply due to a range of circumstances outside of their control. As a result, they may be charged with breaching bail and further penalised.

## Court processes and proceedings

Stakeholders reported that courts can be stressful, overwhelming and confusing for both those who have been charged with a crime and those who are victims of, or witnesses to, crime.

They noted that court processes and proceedings are complex and can be difficult to understand and participate in for adults with cognitive disability. For example, the Magistrates Court was described as fast, noisy and stressful, involving interactions that are difficult to follow.

Stakeholders reported issues with the accessibility of buildings, as well as the administrative processes and forms that need to be completed. Information provided in written formats can also present a challenge for some adults with cognitive disability. These challenges can be



compounded for those whose first language is not English, and who may have difficulty accessing information or assistance in an appropriate language.

As a result of these issues, adults with cognitive disability can experience difficulty understanding the outcomes of court proceedings and, as noted above, bail conditions. This can contribute to people not complying with requirements.

## Remand

Stakeholders noted that, due to the backlog of cases in courts, people can spend significant periods of time on remand. This means that they can be held in custody for extended periods of time while awaiting a hearing or decision by a court.

Stakeholders reported that, while a person is on remand, there are very few programs that are available to participate in, particularly for adults with cognitive disability. It was noted that, while programs relating to alleged offending behaviours would not be appropriate, the opportunity to access training and education related to general life skills could be beneficial for many people and assist them when they are transitioning back into the community.

## Support and assistance

Stakeholders described the critical roles of lawyers and advocates in assisting people with cognitive disability who are victims, witnesses or defendants, to navigate and understand court processes.

However, they noted that many people are not able to access an advocate. This can be due to factors such as people not being aware of the availability of services or how to access an advocate. Many advocacy services are also experiencing significant demand and limited resources, which can also affect access.

It was also noted that, particularly during the early stages of a court process, adults with cognitive disability may be relying on busy duty lawyers who have limited time to spend with each person. This can make identification of disability, and an understanding of how to communicate effectively with an individual, more challenging.

## Pleading guilty

Stakeholders reported that some people with cognitive disability plead guilty to charges because they see this as the easiest, fastest option. However, they might not understand the significant consequences that this can have on their lives.

Murri Court, which is a network of courts at the level of Magistrates Courts, provides a culturally appropriate court process for Aboriginal and Torres Strait Islander peoples (further information about Murri Court can be found in the Public Advocate's courts discussion paper). However, stakeholders noted that, to be eligible for Murri Court, a person needs to plead guilty, which does limit the court's reach.

## Respectful interactions

Similar to the issues raised regarding QPS, some stakeholders with lived experience of disability described negative and disrespectful interactions with people working in the courts. For example, they described situations where they had felt insulted and disrespected by lawyers and judges, including by the use of derogatory terms. This can affect how adults with cognitive disability view their experience of courts and the criminal justice system more broadly, and how they engage with people throughout the process.



## Opportunities for improvement

The following points were raised by stakeholders as potential reforms related to court processes:

- Improving information sharing between relevant agencies and services, including identified disability-related needs, where appropriate.
- Ensuring that people with cognitive disability have access to appropriate support in the lead up to, during, and after court proceedings to ensure that they understand what has occurred and, if relevant, what they need to do next.
- Increasing the availability of disability advocates for those attending court.
- Expanding the QIS to include broader eligibility for victims and also to include defendants, which has been done in the Australian Capital Territory,<sup>33</sup> as well as in the UK.<sup>34</sup>
- Introducing the role of an independent social worker at watchhouses who can talk to people and help to identify those who may benefit from being assessed for disability and/or mental health concerns and organise the provision of relevant support needs.
- Training for lawyers, magistrates and judges to increase their skills and confidence in communicating with people with cognitive disability.
- Involving Elders and Community Justice Groups to ensure a culturally appropriate approach, and the use of place-based responses.
- Ensuring that all forms and documents are accessible to people with cognitive disability, including being made available in appropriate languages and formats.
- Ensuring that bail decisions and conditions are communicated in a format and language appropriate for the individual.
- Simplifying the information, and language, used in critical documents such as notices to appear, bail undertakings and domestic violence orders to ensure that adults with cognitive disability are better able to understand, and comply with, relevant requirements.
- Making appropriate programs and education available to adults with cognitive disability who are on remand.

---

<sup>33</sup> ACT Human Rights Commission, *Australian first as ACT intermediary program expands to support communication needs of vulnerable accused*, 2024, <<https://www.hrc.act.gov.au/news-and-events/news/australian-first-as-act-intermediary-program-expands,-supporting-communication-needs-of-vulnerable-accused>>.

<sup>34</sup> HM Courts & Tribunal Service, *HMCTS intermediary services*, 2022, <<https://www.gov.uk/guidance/hmcts-intermediary-services>>.



## The forensic system (mental health and disability)

A range of issues were identified throughout the consultations in relation to the experiences of adults with cognitive disability in the Queensland Forensic System (mental health and disability), including as they progress through the Mental Health Court and are placed under a Forensic Order.

### Fitness for trial

When a person is found to be unfit for trial, there is limited opportunity to contest the offence (or offences) with which they have been charged.

While the *Mental Health Act 2016* (Qld) allows for a case to be disputed in the Mental Health Court, this process applies only to cases of unsoundness of mind, and is often not included, or requested, in the practice of the court.

This is a particular concern where a person is placed on a Forensic Order, which can last for a significant length of time. Stakeholders noted that this can be frustrating for adults with cognitive disability who may feel that they have not been heard and have been denied the opportunity to 'have their day in court'.

### Assessment and diversion options

The Court Liaison Service conducts assessments to support the identification of adults who are unfit for trial or who were of unsound mind at the time of the offence, to assist with diversion from the Magistrates Court and into appropriate treatment.

However, it was noted that the demand for this service is high, which can result in significant waiting times and subsequent delays in court proceedings.

Stakeholders also noted that adults with cognitive disability could be diverted from the criminal justice system under section 172 of the *Mental Health Act 2016* (Qld), which allows a magistrate to dismiss a complaint for a simple offence where they are satisfied that the person was of unsound mind when the offence was committed or they are unfit for trial. This was seen as a beneficial diversionary option, however stakeholders noted that adults with cognitive disability may have their charges dismissed, but not be referred to access necessary support services, which could result in a cycle of recidivism.

### Treatment and support

Individuals on a Forensic Order are not routinely provided with legal representation or an advocate when appearing before the MHRT. Stakeholders advised that this puts adults on a Forensic Order at a disadvantage, in what can be a daunting environment, and creates a risk that their rights are not upheld.

A stakeholder reported that there can be conflict between the NDIS and the forensic disability service system as to who will fund allied health supports where necessary for an individual with cognitive disability. This conflict can result in people on Forensic Orders not receiving supports that could help to address their criminogenic risk.

Within the forensic system (mental health and disability), it was also noted that there is significant unmet need in relation to disability-related supports. Due to limited resources, the focus is often on the most urgent areas of need (and primarily mental health-related needs), which can lead to an individual's needs that are important but non-urgent remaining unaddressed.

Stakeholders also noted that the forensic system was not optimally designed to address disability-related needs. Most people on inpatient Forensic Orders (Disability) are held in AMHSs even when they do not have a mental health condition that requires treatment. They noted that these



environments, the models of care implemented and the governance structures employed are not optimal for responding to the needs of adults with cognitive disability, especially those who do not have a mental health condition.

It was also noted by stakeholders that, for adults with a dual diagnosis of mental illness and disability, mental health-related needs are often prioritised over disability-related needs. This can result in disability-related needs being poorly met. This was thought to occur, at least in part, due to the health-based models and governance structures dominating the forensic system.

Barriers to information sharing between elements of the forensic system, including inpatient and community-based services, were also thought to negatively affect the treatment and support provided to adults with cognitive disability.

## Revocation of orders

Stakeholders noted that it was difficult for adults on a Forensic Order (Disability) to have this order revoked. It was suggested that this may be due to a staff focus on completing MHRT reports and ensuring that the current approach is working, rather than having a focus on the potential revocation of orders.

While a Treatment Support Order or Treatment Authority were viewed as potential 'step-down' options for people on a Forensic Order (Mental Health), there are no step-down options for a person on a Forensic Order (Disability). This can limit opportunities to have the order revoked.

It was reported by a stakeholder that the six-monthly reviews of Forensic Orders (Disability) have limited benefit as in practice there are often few therapeutic interventions actually being provided over that period of time. This makes it difficult to demonstrate that there has been a change in the level of risk, which is what the MHRT would need to see as evidence to revoke an order.

Consequently, stakeholders reported that it is very rare for a Forensic Order (Disability) to be revoked.

Stakeholders also noted a disconnect between the supports the National Disability Insurance Agency (NDIA) deem to be 'reasonable and necessary' and what the MHRT requires in order for a person's risk of reoffending to be viewed as mitigated and for a Forensic Order to be revoked.

## Indefinite detention

In Queensland, there is no limit to how long a person can be subject to a Forensic Order.

Stakeholders noted that there is more certainty for people going through the mainstream court system than the Mental Health Court because there are limits on sentences. There were concerns that this could lead to people going through a mainstream court who may not have been fit for trial or of sound mind at the time the alleged crime was committed.

## Restrictive practices

A stakeholder noted that most people on community-based Forensic Orders (Disability) are subject to restrictive practices.

However, it was also reported that there can be a lack of understanding about restrictive practices and confusion across the sector in relation to decision-making regarding restrictive practices. This can mean that people find it challenging to advocate to ensure that the least restrictive practice is being used. This was a particular concern in relation to the use of chemical restraints.

One stakeholder noted that this can also result in service providers and other individuals associated with the person not feeling confident about acting to intervene in a situation where there is a risk to a person due to a concern that the action would be a restrictive practice.



The MHRT may wait until appropriate support structures for restrictive practices, including positive behaviour support plans,<sup>35</sup> are in place before changing the category of a Forensic Order from inpatient to community-based.

However, it was noted by stakeholders that there can be delays in the development of positive behaviour support plans. As a result of the time required to establish these important documents, adults with cognitive disability can experience a delay in returning to the community.

It was also reported that behaviour support plans can be poor, or implemented poorly, due to limited expertise in the sector in relation to this complex area, which creates further risks.

## Forensic Disability Service (FDS)

Stakeholders raised concerns that the FDS is a single facility that is located in Brisbane. This means that people from North Queensland have to relocate away from their community for treatment within this service. This was considered to be a particular concern for First Nations peoples, as they are not able to undergo rehabilitation on country or in a location that is conducive to facilitating a connection to family and culture, which is important for healing and recovery.

## Integration across the system

Stakeholders highlighted challenges in integration between services within the forensic system (mental health and disability). For example, they discussed challenges with information sharing between inpatient and community-based services.

## Interactions with other systems

Stakeholders noted that the interface between the FDS and public mental health services is 'confusing and ineffective'. This has consequences for how these services work together and has implications for adults with cognitive disability who receive these services. This issue was thought to be heightened in rural and remote regions.

Additionally, a lack of clarity around the types of supports that are the responsibility of the Queensland Government, and those that are the responsibility of the NDIS, has contributed to problems with service access and the interface between these systems.

## Staff skills and training

Stakeholders noted that it can be difficult to recruit skilled staff within the forensic system (mental health and disability), and that this is quite a specialised and complex area of work.

The introduction of mental health and intellectual disability teams across hospital and health services throughout Queensland was considered an opportunity to improve services and upskill staff in this area.

## Community-based services

Stakeholders also noted a lack of appropriate services to support people as they return to the community. This included challenges with access to appropriate Specialist Disability Accommodation (SDA), Supported Independent Living (SIL) and respite services.

They also noted concerns that a lack of appropriately skilled and trained NDIS-registered behaviour support practitioners was leading to suboptimal management of adults with cognitive disability in the community.

---

<sup>35</sup> Positive behaviour support plans are individualised documents that identify strategies to support a person and reduce any challenging behaviours, including the use of restrictive practices and strategies to reduce or eliminate these over time.



Stakeholders also raised concerns that treating teams lack expertise in managing people with an intellectual impairment, particularly where there is no co-occurring mental illness.

## Potential opportunities for reform

The following points were raised by stakeholders as possibilities for improvement:

- Ensuring that when the MHRT is making conditions for a person to return to the community, if the NDIS will not provide funding and support to enable those conditions to be met, that the Queensland Government is responsible for these supports being available to the person.
- Introducing nominal terms, which would see a limit on the length of a Forensic Order. The end date could be the maximum penalty available for the crime charged. However, stakeholders also noted that this timeframe would not necessarily reflect a person's treatment needs.
- Ensuring that more support is provided to people on Forensic Orders, including clear therapeutic goals and timeframes.
- Considering whether a less intrusive option than a Forensic Order and imprisonment could achieve improved outcomes.
- Introducing step-down options for people on a Forensic Order (Disability).
- Increasing support for people to be fit to plead and participate in mainstream court proceedings.
- Introducing a voluntary register of skilled behaviour support clinicians who are available to work with people engaged with the forensic system who are returning to the community.
- Improving access to training to further develop the skills of practitioners working with people with cognitive disability in the forensic system.
- Improving integration across the system, including between inpatient and community-based services.



# Detention

Appropriate treatment and the provision of reasonable adjustments and supports for adults with cognitive disability who are in correctional centres were all seen as crucial to ensuring that prisoners with cognitive disability are treated equally and are afforded an opportunity to participate in activities that will assist in preventing future offending.

Stakeholders discussed a range of issues faced by adults with cognitive disability who are sentenced to a custodial order and required to spend time in a correctional centre. These included challenges experienced during admission to prison, during their time in prison, and when they are transitioning back to the community.

## Identification of disability

During admission to a correctional centre, adults undergo some screening and assessment to identify immediate risks and needs and to inform decisions about their placement within a correctional centre.<sup>36</sup> This includes the Hayes Ability Screening Index (HASI), which is a tool that is used to screen for intellectual disability. (Further information about screening and assessment in correctional centres can be found in the Public Advocate's detention discussion paper).

However, a number of stakeholders suggested that this assessment was not sufficient to fully understand the needs of adults with cognitive disability who are entering prison. Additionally, they noted the absence of screening for other types of cognitive disability such as dementia or fetal alcohol spectrum disorder (FASD).

Stakeholders highlighted concerns that, even when potential cognitive disability is identified, there is no clear pathway for further assessment and follow-up, and that this often does not lead to therapeutic input.

As was noted in previous sections, many adults with cognitive disability who are entering a correctional centre may not have a previous diagnosis or have undergone previous assessment, or may prefer not to disclose their disability. If disability and support needs are not identified, a person is unlikely to receive appropriate supports and reasonable adjustments.

## Access to disability-related supports

Stakeholders reported that it can be challenging for adults with cognitive disability to access appropriate disability-related supports while in prison. This includes a lack of reasonable adjustments to mainstream services and limitations in the provision of other day-to-day supports, as well as challenges with supports to facilitate a person's transition to the community (issues related to discharge planning are discussed further below).

Stakeholders noted that Justice Liaison Officers can provide support to people to access NDIS services while in prison. However, it was reported that, in practice, it is often unclear whether the NDIS or the Queensland Government has responsibility for funding particular services, and that there is very limited access to NDIS services by people during their time in prison.

Access to external services while in prison can also be limited by security concerns about external support workers entering the prison and issues with availability of staff and services willing, and sufficiently experienced, to work in this environment.

## Access to programs, education and training in prison

Stakeholders reported that it can be challenging for adults with cognitive disability to participate in the programs and training offered in correctional centres.

---

<sup>36</sup> Queensland Corrective Services, *Custodial Operations Practice Directive, Offender pathways*.



There can be long waiting lists to access programs, which can be a particular problem for people who are serving short sentences and who therefore may not have the chance to complete a program prior to leaving prison.

Stakeholders also reported that many training and education programs are not accessible for adults with cognitive disability. For example, it was reported that these programs are not typically designed with consideration of the needs of people who experience challenges with attention, memory or communication. Access to reasonable adjustments can also be limited. As a result, adults with cognitive disability may be considered ineligible for programs and training, both within prison and in the community.

Stakeholders also noted that access to programs to support the development of life skills, such as financial literacy, were often limited.

The physical spaces available within correctional centres for education and training programs was considered to be poor, further limiting what can be offered.

This means that people with cognitive disability may not be able to gain important skills and participate in rehabilitation programs. It can also mean that they can be at a disadvantage when applying for parole, as they may not have been able to access programs that would improve their chances of parole being granted.

Stakeholders also reported a lack of culturally appropriate training and programs. Additionally, they noted that there are very few programs available for people who are on remand.

## Access to mental health services

Stakeholders reported that access to appropriate mental health services was critical, but often limited within correctional centres.

There was concern that, due to the limited services available, waiting times are long and only people with highly acute mental health needs receive services. There was thought to be significant unmet need, which means that people have to wait until their mental health concerns become significantly worse before they are able to access treatment.

Stakeholders also reported that services, when provided, are focused on risk management and on those adults who are in crisis, limiting the types of concerns that can be addressed and the opportunities for mental health treatment.

Concerns were also raised about the lack of culturally appropriate mental health services, both for those within correctional centres, and those returning to the community.

## Discharge planning

Stakeholders described challenges and delays with getting appropriate supports and services in place prior to a person's release on parole or discharge from prison. This includes disability-related supports, decision-making supports, and other services.

This was of particular concern in situations where a person is released from custody on a Friday afternoon, when many services are closing for the weekend as they often operate within standard business hours. For people who live in remote communities, there can also be practical challenges with limited availability of flights or other transport, which may only run once a day or may not operate over weekends. Stakeholders reported that adults with cognitive disability often find it challenging to navigate these issues without assistance.

Consequently, stakeholders highlighted the importance of support coordination to facilitate this process, but noted that there is often insufficient time allocated to organise this prior to a person being discharged or released.



Importantly, they noted that inadequate supports and planning can result in people returning to custody, often within a short time of being released.

## Challenges with reintegration into the community

A person's transition from a correctional centre to the community was described as a critical point, but one that is often challenging for people with cognitive disability.

There are a number of services available to assist people with reintegration into the community, including the Men's Reintegration Service and the Women's Reintegration Service that are funded by QCS. (Further information about reintegration services is discussed in the Public Advocate's detention discussion paper.)

However, as noted above, there can be significant challenges and delays in arranging appropriate supports.

Access to services, including mental health and disability-related supports, was described as challenging for people with cognitive disability who are leaving correctional centres. This difficulty can be exacerbated for people in rural and remote areas.

Challenges within the current housing market, including a shortage of accessible and appropriate housing, can lead to inappropriate housing arrangements and homelessness for people exiting correctional centres. This was thought to compound the range of other challenges people with cognitive disability may be facing as they navigate this transition.

A stakeholder noted that, as a result of limited housing options, a person may have to live in an inappropriate housing environment, without sufficient support. This can lead to conflicts and engagement (or further engagement) with the criminal justice system.

A stakeholder also noted that adults with early onset dementia may not yet be eligible for aged care support and may be excluded from many services due to their criminal history.

The process for accessing the NDIS was also considered to be complicated. Stakeholders noted that the process is difficult and can take a long time, and that maintaining the engagement of people who may also be having problems accessing housing and food can be challenging.

## Culturally appropriate supports and services

Stakeholders noted that the overrepresentation of First Nations peoples, along with a lack of culturally appropriate services, were critical concerns.

They also noted a lack of suitable services for people from culturally and linguistically diverse backgrounds.

This includes a lack of cultural support or peer workers to assist with communication.

## Information sharing

Stakeholders noted that the sharing of information between agencies and service providers is limited. This was thought to create barriers to providing effective support for people with cognitive disability. It can also create challenges in terms of assisting people to obtain bail and to meet appropriate bail conditions.

## Opportunities for improvement

The following points were raised by stakeholders as areas for potential improvement:



- Developing appropriate screening and assessment processes and, where required, relevant tools, to ensure the needs of people with cognitive disability are identified. This should include culturally appropriate assessments.
- Designing all rehabilitation programs and training offered in correctional centres to support participation by adults with cognitive disability or ensure reasonable adjustments are provided to facilitate full participation. This should involve not only easy read or plain language materials, but other adaptations to account for other challenges that may be experienced by people with cognitive disability such as attention, memory, and communication difficulties.
- Ensuring education and training is available to assist people with both criminogenic and non-criminogenic needs.
- Ensuring that programs and support are accessible to adults with cognitive disability who are on remand, with flexible scheduling to accommodate engagement and participation.
- The designation of prison mental health services as AMHSs to enhance the care and treatment available in custodial environments.
- Training for frontline corrective services staff, including to support their understanding of cognitive disability, effective communication, and the provision of reasonable adjustments.
- Improving collaboration and communication between relevant services and agencies across the justice system, including improving information sharing to facilitate better service delivery to adults with cognitive disability.
- Improving the availability of community mental health services, and other supports critical for adults with cognitive disability leaving custody.
- Improving the continuity of support for those leaving prison and returning to the community. For example, enabling service providers to engage with people while they are in custody so that a relationship can be developed and there is continuity of services when they leave custody.
- Increasing the recruitment of First Nations peoples to facilitate the delivery of culturally appropriate services and help to improve outcomes for First Nations peoples in custody.
- Improving discharge planning for those who are on remand and awaiting sentencing and for people who are returning to the community from prison. This could include giving service providers longer timeframes to ensure that appropriate supports and services are in place.
- Providing transitional non-custodial environments to ensure that people have a safe place to stay while they wait for appropriate housing and supports if these were not immediately available to a person upon their release from custody.
- Requiring a transition support worker or small team to be available to meet adults with cognitive disability when they are released from custody and provide them with practical assistance such as transport, housing and referrals for other services.



## Victims and witnesses

Feedback from stakeholders related to adults with cognitive disability who are victims of, and/or witnesses to, crime is summarised under key themes below.

### Disproportionate representation of people with cognitive disability as victims of crime

Stakeholders highlighted that people with cognitive disability are disproportionately represented as victims of crime.

One stakeholder raised concerns that there are not enough safeguards to protect people with cognitive disability from assaults by support workers.

It was also noted that there can be a lack of visibility of adults who are in particular types of accommodation such as group housing where they receive SIL funding from the NDIS. This can leave people vulnerable to abuse.

Vulnerability to, and a lack of protection from, domestic and family violence committed by family members, partners and carers was also raised as a concern. This can be due to factors including an adult with cognitive disability having a limited understanding of their rights, and challenges they face when engaging with services to support them to report a crime and navigate the criminal justice system.

Some adults with cognitive disability may also depend on the perpetrator for daily support, which can lead to a reluctance to report abuse due to a fear about how care arrangements might be affected.

For adults with impaired decision-making ability, the appointment of a guardian to act as a substitute decision maker was sometimes viewed as a safeguard. However, a stakeholder also described concerns about a situation where a person with cognitive disability was being abused by their guardian, who was also a service provider.

A stakeholder also reported that adults with cognitive disability may be at greater risk of physical or sexual assault in prison and hence become, if they were not already, a victim of crime. Their risk can be heightened due to difficulties they face in understanding and navigating the environment, and in reporting their concerns.

### Reporting crime

Stakeholders noted that adults with cognitive disability who are victims of crime may need assistance to identify that a crime has occurred, to understand their rights, to know that they are able to report the crime, and to navigate the system to do so.

As was noted by a stakeholder with lived experience of disability, before they can report a crime, people first need to know that what happened was wrong.

It was noted that adults with cognitive disability may be reluctant to report abuse due to their fear of reprisal, or a lack of trust in authorities and the criminal justice system.

Stakeholders also noted that people with cognitive disability who are victims of crime can be dismissed by police due to perceived 'gaps' in their story or because of communication challenges related to their disability.

A stakeholder reported that traditional investigative processes may rely heavily on verbal recall and conventional victim statements. Police may also lack an understanding of communication styles and have limited alternative strategies which can lead to reports from adults with cognitive disability not being progressed.



Stakeholders also noted that police can make assumptions about a person's capacity, which can lead to them not communicating with the person with cognitive disability.

A stakeholder gave examples of situations where police had discouraged adults with cognitive disability from proceeding with a report on the basis that police viewed it as unlikely that this would result in a positive outcome, due to a perceived lack of evidence, or due to assumptions that the person's testimony would be inadmissible. Such discouragement can also occur due to perceptions that the process would be too difficult and not beneficial overall for the adult with cognitive disability.

It was noted that although the above actions can be well-intentioned, with the aim of protecting adults with cognitive disability from the stressful and challenging process of navigating legal proceedings, the effect can be to discourage them from reporting crimes, ultimately preventing their access to justice.

## Definitions of family and domestic violence

The Disability Royal Commission recommended that relevant legislation be amended to ensure a disability-inclusive definition of domestic and family violence:

### **Recommendation 8.24 Disability-inclusive definition of family and domestic violence**

In working towards nationally consistent, inclusive definitions of gender-based violence under the National Plan to End Violence against Women and Children 2022–2032, states and territories should amend their legislative definitions of family and domestic violence to include:

- all relationships in which people with disability experience family and domestic violence, including but not limited to carer and support worker relationships
- disability-based violence and abuse
- all domestic settings, including but not limited to supported accommodation such as group homes, respite centres and boarding houses.

The *Family Law Act 1975* (Cth) and any relevant state and territory laws should also be amended consistently with this recommendation.<sup>37</sup>

This recommendation was accepted in principle by the Australian and Victorian governments. The Queensland Government, along with the Australian Capital Territory, New South Wales, Northern Territory, South Australian, Tasmanian, and Western Australian governments indicated that this recommendation would be subject to further consideration.<sup>38</sup>

In their response to the Public Advocate's discussion paper on victims and witnesses, one stakeholder noted their concerns about expanding the definitions within the *Domestic and Family Violence Protection Act 2012* (Qld). They noted that it risked diluting the current efficacy of this Act by expanding the focus of the legislation. They also noted that there were existing legislative means for addressing disability-related violence, including through the *Criminal Code 1899* (Qld).

## Extension of preliminary complaint evidence to offences other than sexual offences

A stakeholder noted that the *Evidence Act 1977* (Qld) has been expanded to allow the admissibility of preliminary complaint evidence in relation to domestic violence offences, which was a recommendation from the Women's Safety and Justice Taskforce (recommendation 76).<sup>39</sup>

<sup>37</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 8: Criminal justice and people with disability', p. 344.

<sup>38</sup> Queensland Government, *Queensland Government response to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Updated October 2025)*, 2025.

<sup>39</sup> Women's Safety and Justice Taskforce, *Hear her voice—Report two—Volume one—Women and girl's experiences across the criminal justice system*, Brisbane, Queensland, 2022, p. 22.



They highlighted concerns regarding the possible unreliability of statements made out of court and suggested that the use of this kind of evidence should be limited.

## Credibility

Stakeholders highlighted the impact that stigma and a lack of understanding about disability can have on perceptions of a person's credibility as a witness. Adults with cognitive disability may not be viewed as credible on the basis of their disability when they are trying to report a crime to a supporter or the police, or when giving evidence in court. As a result, their story and their evidence may not be believed.

A lack of understanding about how a person's behaviour can be related to their disability, or the effect of certain medications, can lead to their allegations not being taken seriously or their credibility being questioned.

This can prevent access to justice for adults with cognitive disability. It can also act as a deterrent for reporting issues such as violence or abuse in the future, as the person may fear that their reports will not be believed and that no actions will be taken.

## Giving evidence

Stakeholders noted the difficulties that adults with cognitive disability can experience when giving evidence, including demonstrating their competency to give evidence, accessing appropriate support to do so, and having their evidence viewed as credible due to prejudicial assumptions about people with disability (as discussed above).

Some of the safeguards that exist to support people with cognitive disability to give evidence in court were highlighted in discussions with stakeholders, including special witness measures, intermediaries, limitations on cross-examination, and admission of unsworn evidence.

However, stakeholders also noted that there is generally a lack of appropriate and available support to enable adults with cognitive disability to communicate their experiences accurately and confidently when giving evidence in court.

Adults with cognitive disability for whom English is a second language can experience additional challenges and may also require access to an interpreter or audio or visual aids when giving evidence.

A stakeholder also noted the importance of finding a balance between supporting victims and witnesses to give evidence, and upholding a defendant's right to test the evidence in court.

## Queensland Intermediary Scheme (QIS)

The QIS, which operates in Brisbane and Cairns, aims to overcome some communication barriers by assisting 'vulnerable witnesses' with communication needs to give evidence.<sup>40</sup> This is considered to improve the quality of evidence presented, help to reduce the trauma that can be experienced by witnesses, and result in fairer outcomes.<sup>41</sup>

Intermediaries are impartial officers of the court and do not act as a support person for a witness. Their role is to:

- assess the communication needs of vulnerable witnesses; and

---

<sup>40</sup> Queensland Courts, *Queensland Intermediary Scheme*, <<https://www.courts.qld.gov.au/services-and-online-actions/advice-and-support/about-the-queensland-intermediary-scheme>>.

<sup>41</sup> Queensland Courts, *Queensland Intermediary Scheme frequently asked questions*, <<https://www.courts.qld.gov.au/services-and-online-actions/advice-and-support/about-the-queensland-intermediary-scheme/queensland-intermediary-scheme-frequently-asked-questions>>.



- make recommendations and provide practical strategies to police, lawyers and judges on how to communicate with vulnerable witnesses to best obtain their evidence.<sup>42</sup>

The QIS assists eligible prosecution witnesses in child sexual offence matters, however some out-of-scope referrals may be considered.<sup>43</sup>

Further information about the QIS is provided in the Public Advocate's courts discussion paper.

A stakeholder noted the positive impact of the QIS, but also noted that its reach is limited geographically due to the service being available only in Brisbane and Cairns.

The potential for expansion of the QIS was raised. One stakeholder noted that the potential impact of this might include delays to court proceedings.

## Navigating a complex system

A stakeholder described the criminal justice system as 'fragmented' and reported that victims of crime, including those with cognitive disability, can find the system confusing and difficult to navigate. People can be unsure of where they can go to access assistance, and which services or organisations are applicable to them and their situation.

They noted that the Victims Advocate Service, to be established and funded by the Queensland Government and due to commence operations in 2026, may assist with this issue.

The Victims Advocate Service will 'provide targeted support pathways and resources to guide victims of crime from the start to the end of the justice process. It will also connect victims of crime to existing support services.'<sup>44</sup>

Court proceedings can take a long time, and there can be significant delays. These delays can feel frustrating to victims, and it can feel like nothing is happening and that people no longer care about them or their experience.

A stakeholder noted that there are some supports available to victims, but that they can be difficult to identify and access, particularly for adults with cognitive disability.

The Charter of Victims' Rights includes the requirement that:

An affected victim will be informed at the earliest practicable opportunity about services and remedies available to the victim.<sup>45</sup>

However, it was reported that, in practice, this does not always occur.

Advocates can assist people with referrals, however it was noted that advocacy services are often operating with limited resources, so may not be able to assist everyone.

It was also noted that victims of crime report not being kept updated on progress, not being notified when there is a change in the charge against the offender, and not being told when sentencing is happening.

Victims can also find it challenging to access copies of the decisions made by the magistrate or judge. When they do obtain a copy, many feel as though their experience and the challenges they have faced are not reflected in the records of proceedings and decisions.

<sup>42</sup> Queensland Courts, *Queensland Intermediary Scheme, general fact sheet*, 2023, <[https://www.courts.qld.gov.au/\\_\\_data/assets/pdf\\_file/0007/862306/general-fact-sheet.pdf](https://www.courts.qld.gov.au/__data/assets/pdf_file/0007/862306/general-fact-sheet.pdf)>.

<sup>43</sup> Queensland Courts, *Queensland Intermediary Scheme*.

<sup>44</sup> Department of Youth Justice and Victim Support, *Victims Advocate Service*, 2025, <<https://www.youthjustice.qld.gov.au/victim-support/victims-advocate-service>>.

<sup>45</sup> *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) sch 1 pt 1 div 1 s 3.



## Respectful interactions

As was noted above in relation to offenders, stakeholders raised concerns about disrespectful treatment of people with cognitive disability who are victims of crime.

Several people provided examples of situations where they felt that police had not taken people with cognitive disability or their concerns seriously or had not believed them based on stereotypes and stigma associated with disability.

## Victim impact statements

A stakeholder highlighted the role that victim impact statements play in providing victims of crime with an opportunity to tell the court about the impact of a crime. However, they noted that, for adults with cognitive disability, writing these statements can be a challenge and that it is important that sufficient time and support is provided to assist people in this task.

Another stakeholder viewed the current provisions in the *Penalties and Sentences Act 1992* (Qld) as sufficient for protecting the right of victims to make a victim impact statement.<sup>46</sup>

## Opportunities for improvement

The following points were raised by stakeholders as possible improvements:

- Creating a 'one stop shop' for victims to enable referrals to be made to a range of services including counselling, legal advice, and disability-related supports, potentially through the new Victims Advocate Service.
- Improving the accessibility of the Queensland Charter of Victims' Rights, which outlines the rights of victims of crime. The Charter is currently being reviewed by the Victims' Commissioner, including consideration of its accessibility.
- Providing accessible information to adults with cognitive disability about their rights, how to identify abusive behaviours, and what to do if they have been the victim of a crime. It was noted that some of this information exists, but it can be difficult to access for adults with cognitive disability who are not aware of their rights.
- Providing education and training to carers and supporters to build awareness and understanding around risk and identification of when a person has been a victim of crime, as well as where to go for assistance and support.
- Providing education and training to people working within the criminal justice system to enable them to better understand cognitive disability and effective ways to communicate with, and respond to, adults with cognitive disability. This could include training for police to ensure that people are able to access a support person where required.
- Training for workers who are often part of the immediate response to victims of crime (e.g., police and health staff) to ensure the rights of an adult with cognitive disability are upheld.
- Developing public awareness campaigns to promote greater understanding of cognitive disability and reduce stigma and unconscious bias towards people with cognitive disability who are victims of crime.
- Exploring options for an anonymous or third-party mechanism for reporting crime to assist with addressing fears of retaliation, of not being believed, or of being treated differently due to the stigma associated with cognitive disability.
- Developing accessible and inclusive reporting mechanisms tailored to the needs of adults with cognitive disability to support them to report crime and navigate the criminal justice system.
- Conducting a review of legal processes and training to encourage the identification of people with undiagnosed cognitive disability and the use of appropriate adjustments based on identified needs.
- Introducing liaison officers or advocates to ensure that the voices of adults with cognitive disability are heard and respected.
- Improving access to advocates to not only support people when a crime has occurred, but to help people to develop strategies to improve their personal safety.

---

<sup>46</sup> *Penalties and Sentences Act 1992* (Qld) s 179L.



- Increasing the support available to people with cognitive disability as they engage with police and the courts, with continuity of supporters where possible.
- Ensuring that adults with cognitive disability receive information and are kept up to date throughout the criminal justice process using communication methods suitable for their individual communication needs.
- Increasing the availability of crisis accommodation that can manage the potentially complex care needs of an adult with cognitive disability (for situations where a perpetrator resides with the victim).
- Developing a multi-agency approach to respond to, and support the needs of, victims of crime with cognitive disability.
- Encouraging partnerships between disability advocacy organisations and police to empower adults with cognitive disability to report crimes and seek assistance.
- Expanding the High Risk Teams model to include cases beyond domestic and family violence situations to include addressing the needs of adults with cognitive disability.
- Facilitating information sharing and coordination between relevant agencies.
- Exploring the potential introduction of community impact statements, potentially similar to the community impact statements used in South Australia.



# Reforming the system: Critical issues and reform recommendations

Across this project, through the analysis of previous reports, legislation and policies, as well as extensive stakeholder consultation, a number of critical issues have emerged, which affect the ability of adults with cognitive disability to receive access to justice.

To address these issues, this report contains 26 recommendations for reform of the Queensland criminal justice system. These issues and related recommendations are discussed in greater detail below.

Many of the issues identified are relevant to the criminal justice system as a whole, and some recommendations have therefore been made for system-wide reform. Other recommendations are targeted at specific components of the criminal justice system.

The recommendations are relevant to improving access to justice for victims, witnesses and alleged or convicted perpetrators with cognitive disability, to promote fairness and community safety.

It should also be noted that there is currently significant reform work underway in the criminal justice system in Queensland, and a number of programs and services already operate that help to support people, including adults with cognitive disability, to access justice and progress through the criminal justice system. These have been discussed where possible throughout this report. However, given the size and scope of the criminal justice system in Queensland, it is difficult to highlight all current programs and activities. Many of the programs and services are discussed in greater detail within the Public Advocate's discussion papers.

## System-wide

### First Nations peoples with cognitive disability

As previously noted, First Nations peoples, including those with cognitive disability, are disproportionately represented within the criminal justice system as victims of crime and offenders, compared to those who are not First Nations peoples.<sup>47</sup>

Aboriginal and Torres Strait Islander peoples make up 4.6 per cent of the Queensland population.<sup>48</sup> However, nearly 40 per cent of adults in prison in Queensland are Aboriginal and Torres Strait Islander peoples.<sup>49</sup>

The Disability Royal Commission heard many concerns about the treatment and experiences of First Nations peoples across Australia in their engagements with the criminal justice system:

Throughout our inquiry, First Nations people with disability raised concerns about their interactions with police and corrections personnel, as well as conditions in adult prisons and youth detention centres. We heard about racist and ableist attitudes towards First Nations people with disability in these settings, as well as physical violence against them, and use of physical and chemical restraints.<sup>50</sup>

Significant concerns regarding the deaths of First Nations peoples in custody led to the establishment of the Royal Commission into Aboriginal Deaths in Custody in 1987. It published its

---

<sup>47</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 9: First Nations people with disability', *Final report*, 2023.

<sup>48</sup> Australian Bureau of Statistics, *Queensland: Aboriginal and Torres Strait Islander population summary*, 2022, <<https://www.abs.gov.au/articles/queensland-aboriginal-and-torres-strait-islander-population-summary>>.

<sup>49</sup> Australian Bureau of Statistics, *Prisoners in Australia data set, Prisoner characteristics, States and territories*, Table 15, 2025.

<sup>50</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 9: First Nations people with disability', p. 142.



final report in 1991, which contained 339 recommendations for reform.<sup>51</sup> While some work has been undertaken in relation to these recommendations, the deaths of First Nations peoples in custody remains a significant concern. Between 1 July 2024 and 30 June 2025, there were 33 deaths of Aboriginal and Torres Strait Islander people in custody nationally, which is the largest number since 1979-80.<sup>52</sup>

The Queensland Government, along with all other Australian Governments (at local, state and territory, and Commonwealth levels), has committed to reducing the overrepresentation of Aboriginal and Torres Strait Islander peoples in prisons. Under the National Agreement on Closing the Gap, governments have committed to the following target:

By 2031, reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent.<sup>53</sup>

In Queensland, progress towards this target has been assessed as 'worsening'.<sup>54</sup>

Stakeholders also discussed a range of concerns about the lack of culturally appropriate processes and services across the criminal justice system, including:

- screening processes, including for First Nations peoples in prison, that are not comprehensive, culturally appropriate or trauma-informed;
- an under-representation of First Nations peoples in roles that enable the delivery of culturally appropriate services;
- language barriers for those whose first language is not English or who experience hearing loss, which contributes to difficulties with navigating the system, understanding rights, and accessing relevant services and programs; and
- a lack of culturally appropriate rehabilitation and training to support the development of practical skills and help to prevent recidivism.

Additional information regarding these issues and others impacting on the interactions of First Nations adults with cognitive disability in the criminal justice system is included in the Public Advocate's discussion papers.

The Disability Royal Commission also highlighted the inequalities experienced by First Nations peoples with disability as they interact with the criminal justice system and made the following recommendation:

**Recommendation 9.3 Cultural safety of First Nations people in criminal justice settings**

By the end of 2024, state and territory governments should review the effectiveness of their strategies, if any, directed to providing and ensuring the cultural safety of First Nations people with disability in criminal justice settings and in doing so take into consideration what the Royal Commission has heard about that issue.

The review findings and recommendations should be made public.<sup>55</sup>

In response to these concerns, a number of initiatives are underway in Queensland.

The First Nations Justice Office (FNJO), which is part of DOJ, was established to address the overrepresentation of Aboriginal and Torres Strait Islander peoples in Queensland's criminal justice system.

---

<sup>51</sup> Commonwealth Royal Commission into Aboriginal Deaths in Custody, 'Royal Commission into Aboriginal Deaths in Custody, National Report Volume 1', 1991.

<sup>52</sup> M McAlister, H Miles & S Bricknell, *Deaths in custody in Australia 2024-25*, AIC reports, Statistical report 57, Australian Institute of Criminology, Canberra, 2025.

<sup>53</sup> Coalition of Aboriginal and Torres Strait Islander Peak Organisations and Australian Governments, *National Agreement on Closing the Gap*, 2020, <[https://www.closingthegap.gov.au/sites/default/files/2022-09/ctg-national-agreement\\_apr-21-comm-infra-targets-updated-24-august-2022\\_0.pdf](https://www.closingthegap.gov.au/sites/default/files/2022-09/ctg-national-agreement_apr-21-comm-infra-targets-updated-24-august-2022_0.pdf)>, p. 32.

<sup>54</sup> Productivity Commission, *Closing the Gap Annual data compilation report*, July 2026, p. 115.

<sup>55</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 9: First Nations people with disability', p. 146.



In 2025, the Queensland Government announced a \$5 million Justice Reinvestment Grant program. The FNJO is leading the delivery of this program, which will 'support initiatives in First Nations communities, including prevention strategies that reduce the likelihood of justice system involvement'.<sup>56</sup>

The FNJO is also leading Queensland's response to recommendation 9.3 from the Disability Royal Commission regarding the cultural safety of First Nations people in the criminal justice system.<sup>57</sup>

The FNJO has led the development, oversight and implementation of the *Better Justice Together: Queensland's Aboriginal and Torres Strait Islander Justice Strategy 2024-2031*.<sup>58</sup> This strategy was co-designed with Aboriginal and Torres Strait Islander community members, community-controlled organisations, government agencies, and non-government organisations.

The strategy incorporates a number of focus areas. These include working towards 'a better and fairer justice system',<sup>59</sup> through identifying and addressing racism and embedding cultural safety. 'Addressing offending and re-offending'<sup>60</sup> is another key focus area, to be achieved through the development of culturally appropriate and safe services and supports.

In 2025, the Family Responsibilities Commission also launched an initiative called the My Justice Journey program.

These represent important programs and initiatives. However, as noted by stakeholders across the consultations, more work is needed to provide culturally appropriate and safe services to First Nations peoples with cognitive disability, and to meet the target of reducing the incarceration of First Nations peoples.

### Recommendation 1

The Queensland Government should develop a specific targeted approach to address the over-representation of First Nations adults with cognitive disability in the criminal justice system. This approach, among other things, should ensure that actions in response to other reform recommendations in this report adequately cater for First Nations adults with cognitive disability, with a particular emphasis placed upon:

- a) improving the provision of accessible information during and following the interactions of First Nations adults with cognitive disability with the Queensland Police Service and Queensland courts, including through greater use of First Nations languages;
- b) ensuring the provision of accessible and culturally-appropriate disability and independent living support programs in correctional facilities; and
- c) guaranteeing the provision of culturally-appropriate post-detention support.

While the focus of this recommendation is on First Nations adults with cognitive disability, a broader approach to address the over-representation of First Nations peoples in the justice system should incorporate greater usage of local languages and recognition of the communication needs of First Nations peoples who are Deaf or have a hearing impairment.

<sup>56</sup> D Frecklington (Attorney-General and Minister for Justice and Minister for Integrity), *New justice grants to make Queensland safer and support local communities*, media release, The State of Queensland, 11 November 2025.

<sup>57</sup> Department of Justice, *Review of cultural safety in criminal justice settings*, 2025, <<https://www.justice.qld.gov.au/about-us/services/first-nations-justice-office/priorities/review-of-cultural-safety-in-criminal-justice-settings>>.

<sup>58</sup> The State of Queensland (Department of Justice and Attorney General), *Better Justice Together: Queensland's Aboriginal and Torres Strait Islander Justice Strategy 2024-2031*, Brisbane, Queensland, 2024.

<sup>59</sup> The State of Queensland (Department of Justice and Attorney General), *Better Justice Together: Queensland's Aboriginal and Torres Strait Islander Justice Strategy 2024-2031*, p. 10.

<sup>60</sup> The State of Queensland (Department of Justice and Attorney General), *Better Justice Together: Queensland's Aboriginal and Torres Strait Islander Justice Strategy 2024-2031*, p. 10.



Culturally appropriate screening for cognitive and other disability when First Nations peoples interact with the criminal justice system should also be developed and implemented to ensure necessary support and adjustments can be provided.

There are also opportunities to improve the recruitment of First Nations peoples in the criminal justice workforce, who can support the provision of culturally appropriate and safe support services. Appropriate support for First Nations staff should also be considered, as they can face the risk of re-traumatisation and additional pressures to provide cultural knowledge, education and support without formal agreement.<sup>61</sup> This can lead to burnout and issues with retention.

Legal Aid Queensland could be tasked with further developing its 'Blurred Borders' resources, which use visual storytelling and plain language to help people understand the law and their legal rights.<sup>62</sup> This would support adults with cognitive disability, especially those in rural and remote parts of the state, to have access to information about the criminal justice system. These expanded resources should be available in multiple languages, including First Nations languages, and should be accompanied by a targeted educational outreach strategy.

Importantly, work to improve the response to First Nations people who engage with the criminal justice system, whether that is as victims of crime or as offenders, should be undertaken in partnership with First Nations communities, in alignment with the *Better Justice Together* strategy and the National Agreement on Closing the Gap.

## Accessing disability supports

Across the discussions held in relation to this report, stakeholders described the challenges that adults with cognitive disability experience when engaging with the complex criminal justice system. They also discussed the difficulties that people can have accessing necessary supports and services. This includes support to participate equally in the criminal justice system, as well as disability-related support or support for issues relevant to offending.

Stakeholders reported that, without appropriate supports in place, many offenders with cognitive disability will 'cycle through' the Magistrates Court for minor offences. This can eventually lead to a more serious charge or penalty, which could have been avoided if earlier support and intervention had been provided.

As was noted by stakeholders, the provision of appropriate supports to adults with cognitive disability involved in the criminal justice system can assist to address factors related to their offending, which can help to prevent recidivism and potentially reduce crime.

### Recommendation 2

The Queensland Government should trial the operation of Justice Case Managers, whose role should be to coordinate the provision of support services to adults with cognitive disability who have repeat contact with the criminal justice system and who have significant unmet support needs. Justice Case Managers should be available at any stage of the criminal justice process, with priority placed on their availability to people involved in repeat summary offending. The role of Justice Case Managers should be coordinated with existing programs, including Court Link.

The main aim of the program would be to help break the cycle of recidivism with the provision of appropriate supports to offenders to assist in meeting their disability-related, and other, support needs.

<sup>61</sup> N Sivertsen, C Ryder, & T Johnson, *First Nations people often take on the 'cultural load' in their workplaces. Employers need to ease this burden*, The Conversation, 2023, <<https://theconversation.com/first-nations-people-often-take-on-the-cultural-load-in-their-workplaces-employers-need-to-ease-this-burden-193858>>.

<sup>62</sup> Legal Aid Queensland, *About Blurred Borders Queensland*, 2025, <<https://www.legalaid.qld.gov.au/Blurred-Borders/Blurred-Borders-Queensland/About-Blurred-Borders-Queensland>>.



This program would be broader than the services currently provided by Court Link, introducing a new service to provide support to adults with cognitive disability who are repeatedly committing minor offences, to help prevent recidivism.

Court Link is a voluntary 'integrated court assessment, referral and support program'<sup>63</sup> that can connect people with treatment and support services. People who are assessed as having a low level of risk or lower levels of need may be referred to appropriate community-based services. Those assessed as having moderate to high risk or needs may be eligible for case management.

A person who participates in case management through the existing Court Link program must have been granted bail, and their engagement in the program is monitored by the court.<sup>64</sup> The court receives reports from Court Link and may consider a person's positive engagement in the program during sentencing. (Court Link is discussed in further detail in the Public Advocate's courts discussion paper.)

It is anticipated that Justice Case Managers would operate a service that does not replace, but rather complements, the Court Link service.

Unlike Court Link, the proposed Justice Case Managers would have a remit beyond a person's engagement at court.

It is anticipated that a number of adults with cognitive disability who do not meet the eligibility criteria for Court Link would be able to access assistance through the Justice Case Manager program.

The trial of this program should involve Justice Case Managers being available to individuals at any stage of the criminal justice process, from arrest to post-release.

The criteria for participation could be significant disability-related unmet support needs and repeat contact with the criminal justice system.

Justice Case Managers could also work with adults with cognitive disability whose charges have been dismissed under section 172 of the *Mental Health Act 2016*, providing a link to critical services to address support needs and help to prevent the cycle of low-level offending that was identified as a concern by stakeholders.

Justice Case Managers would need to work closely with services and agencies both within the criminal justice system and external to this system, to ensure a holistic, person-centred approach.

For this reason, responsibility for the proposed trial of Justice Case Managers could fall to DFSDSCS, which could operationalise the trial in collaboration with DOJ. A tender process to run the trial could be auspiced by DFSDSCS, with an element of the trial's evaluation being the extent to which the proposed key eligibility criteria (that the person has repeat contact with the criminal justice system, and significant unmet support needs) are able to be operationalised. The evaluation could also examine the impact of service referrals on subsequent criminal justice system engagement.

## Responding to mental health and behavioural crises

While acknowledging the difficult situations that police face in responding to emergency situations, police responses to incidents related to mental health or disability-related behaviours were raised as a significant concern by stakeholders.

Adults with cognitive disability may perceive a police response as intimidating or threatening, particularly if they have had previous negative experiences with the criminal justice system.

---

<sup>63</sup> Queensland Courts, *Court Link*, fact sheet, 2026, <[https://www.courts.qld.gov.au/\\_\\_data/assets/pdf\\_file/0008/856367/cip-fs-court-link.pdf](https://www.courts.qld.gov.au/__data/assets/pdf_file/0008/856367/cip-fs-court-link.pdf)>, p. 1.

<sup>64</sup> Queensland Courts, *Court Link*.



Police can also misinterpret behaviours related to cognitive disability as non-compliant or aggressive. Stigma and a lack of understanding about cognitive disability, or the skills to identify and respond appropriately, can also affect these interactions.

These factors, and others, can lead to situations escalating and people with cognitive disability being charged with a crime when the original call was for assistance.

These concerns have also been highlighted in a number of previous reports and reviews of the criminal justice system.<sup>65</sup>

Many stakeholders identified the need for additional training for police to enable them to better understand cognitive disability and de-escalate situations more effectively.

They also discussed potential alternative responses to behavioural and mental health crises.

One alternative model, the Right Care Right Person model, which has been implemented in the UK, involves an assessment of whether police are the most appropriate service to respond to mental health related incidents.<sup>66</sup>

This model sees police respond to mental health related incidents only where a crime has occurred or is occurring or where there is an immediate risk of harm to a person. Other mental health related calls are referred to an appropriate agency.

While this change was welcomed by some, concerns were also raised about whether there were sufficient safeguards in place and whether alternative services had sufficient funding and capacity to respond effectively.<sup>67</sup>

The New Zealand Police also commenced a pilot of this model, however challenges with implementation have resulted in a delay to any further roll-out of the scheme.<sup>68</sup>

The QPS Commissioner's 100 Day Review final report highlighted the challenges faced by Queensland police in responding to the increase in demand for police responses in relation to mental health issues. It discussed the Right Care Right Person model and notes that the available information 'supports an uplift to the current QPS mental health arrangements rather than the implementation of a model such as the [Right Care Right Person]'.<sup>69</sup>

Within Queensland, there are several different models of co-responder programs, however these programs typically see mental health clinicians partnered with ambulance and police officers to enhance responses to people experiencing acute mental health concerns. The programs can also support diversion away from hospitals and the criminal justice system.

Co-responder models provide a way to de-escalate, and respond to, mental health-related calls, and enable mental health-related crises to be address in the community rather than in emergency departments.<sup>70</sup>

---

<sup>65</sup> See for example: Australian Human Rights Commission, *Equal before the law: Towards disability justice strategies*, 2014; Centre for Innovative Justice (RMIT University) and Jesuit Social Services, *Enabling justice for people with an acquired brain injury*; Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 8: Criminal justice and people with disability'; Dowse et al., *Police responses to people with disability*; K Ellem, L Dowse, S Rowe, L Holland, M Parker, & C Henderson, *Insights from people with lived experience of disability and the justice system*, Final report, University of Queensland, 2023; Queensland Advocacy Incorporated (QAI), *Disabled justice: The barriers to justice for persons with disability in Queensland*, report prepared by P French, QAI, 2007; *dis-Abled Justice: Reforms to justice for persons with disability in Queensland*, QAI, 2015.

<sup>66</sup> Police.uk, *Right Care Right Person*, <<https://www.police.uk/advice/advice-and-information/concern-for-welfare/right-care-right-person/>>.

<sup>67</sup> C O'Reilly, 'Editorial: Right care, right person? Changing police responses to mental health crises', *Journal of Mental Health*, vol. 34, no. 2, 2025, pp. 125–127.

<sup>68</sup> Queensland Police Service, *Commissioner's 100-day review of the Queensland Police Service- Final report*, 2025.

<sup>69</sup> Queensland Police Service, *Commissioner's 100-day review of the Queensland Police Service- Final report*, p. 47.

<sup>70</sup> M Wyder & S Powell, *Metro South Addiction and Mental Health Services QPS and QAS Co- Responder Evaluation*, Metro South Addiction and Mental Health Services, Brisbane, Qld, Australia, Brisbane, Queensland, 2022; T Meehan, J Brack, Y Mansfield & T Stedman, 'Do police-mental health co-responder programmes reduce emergency department presentations or simply delay the inevitable?', *Australasian Psychiatry*, vol. 27, no. 1, 2019, pp. 18–20.



Among other potential improvements, there is a need for skills to be developed and utilised in co-responder programs regarding the de-escalation of situations of behavioural crises that are not mental illness related.

In addition, the presence of different models across the state does mean that there is potential for a disjointed and decentralised approach, resulting in a lack of consistency and availability of key personnel when required.

A more consistent and centralised approach to the operation of co-responder teams would ensure a more uniform service which could build community awareness and trust associated with the implementation of this model.

### **Recommendation 3**

The Queensland Government should fund and promote the expansion and coordination of co-responder programs, which enable health and other supportive responses to be prioritised when mental health or behavioural crises occur in the community. This should involve:

- a) the establishment of new co-responder programs in areas of significant need;
- b) the creation of a central statewide point of contact for co-responder programs; and
- c) the development of standardised expectations concerning the roles and responsibilities of co-responding agencies.

## **Information sharing**

Throughout the discussions held with stakeholders, the Public Advocate heard about problems caused by limited information sharing across the criminal justice system.

Information about an adult with cognitive disability, including about their disability and support needs, is often not shared between agencies within the system. Non-government service providers also find it challenging to access relevant information about people that would facilitate effective service provision or the provision of critical information to government services.

Agencies and service providers usually rely on the adult with cognitive disability providing this information, which can be a particular challenge for those who may experience, for example, issues with memory and communication.

Problems with limited information sharing are thought to create barriers to the provision of effective assistance to people with cognitive disability as they navigate the criminal justice system, whether they are victims, alleged perpetrators, or people who have been convicted of a crime.

### **Recommendation 4**

To ensure that the support needs of people with cognitive disability are able to be identified and met across the criminal justice system, the Queensland Government – after consulting with the Queensland Police Service, Queensland Health, the Queensland Ambulance Service, Queensland courts, and Queensland Corrective Services – should develop a practical way in which information concerning people's support needs can safely and reliably be captured and shared across policing, health, court, and correctional sectors.

The emphasis of this information sharing should be on identifying support needs and strategies to facilitate more appropriate service responses to, and positive interactions with, people with cognitive disability.



As was noted by stakeholders, the sharing of information must be balanced with respect for privacy and consideration of how consent to share information would be obtained from the person with cognitive disability or their supporters or substitute decision makers where necessary. In deciding what information should be shared, priority should be given to the perspective of the adult with cognitive disability.

Care should be taken to ensure that the information shared assists the adult with cognitive disability and does not lead to stigmatisation or disadvantage.

Improved sharing of information across relevant agencies and services may help to reduce the reliance on individuals with cognitive disability self-reporting disability and related needs. It would also reduce the need for people to re-tell their personal story and provide information multiple times across their engagement with the system, which can be a source of stress, frustration, and further trauma.

While the focus of information sharing should be on supports and not diagnosed disability or health conditions, it should also enable the results of any screening or assessments to be shared where consent has been provided, to avoid the need for unnecessary repeated assessment. At the same time, as stakeholders noted, it is important to consider the type of assessment and the information that it aims to provide to ensure that the results are being interpreted, and used, appropriately.

It is also important to ensure that information being shared is accurate and that there is a way to update and correct information if required. This also recognises that an adult's cognitive disability and related support needs can fluctuate or change over time, and that one interaction or experience that occurred many years ago should not continue to define a person's interactions with the system if it is no longer relevant.

Any information sharing agreement between agencies could be formalised by way of a Memorandum of Understanding.

There is also a strong case to be made for reforms to enable the sharing of otherwise personal information in a wider array of situations than are currently covered by the Australian Privacy Principles, which have state equivalents in the form of the Queensland Privacy Principles.

Age Discrimination Commissioner Robert Fitzgerald and the Public Advocate are exploring national reform on this front in a bid to improve our ability to prevent and respond to the financial abuse of older Australians.

Currently the Australian Privacy Principles (contained in Schedule 1 to the *Privacy Act 1988* (Cth)) enable information to be shared where this is authorised by law or comes within what is known as a 'permitted general situation' (Australian Privacy Principle 6). This latter phrase is defined to enable the sharing of information where this is 'necessary to lessen or prevent a serious threat to the life, health or safety of an individual'.<sup>71</sup>

To support the prevention of, and improve responses to, the financial abuse of adults with cognitive disability (to prevent them becoming victims of crime), there is a strong case to be made for seeking a broader legislative definition of 'safety' in section 16A of the *Privacy Act*, to define this to mean 'freedom from violence, abuse, neglect or exploitation, including financial abuse or exploitation'.

## Access to independent advocacy services

Across this project, stakeholders consistently reported that people with cognitive disability can find it difficult to access advocacy services.

Advocates can provide critical support to people engaging with the criminal justice system, whether they are a victim of crime, a witness, or accused of a crime. Advocates are able to

---

<sup>71</sup> *Privacy Act 1988* (Cth) s 16A(1)(c).



support people to navigate this complex system, help them to interact with the various agencies and services involved, and ensure that their rights and wellbeing are being protected. Advocates can also help people to access services and other supports to address factors that have contributed to their offending.

Advocates differ to the Justice Case Managers described in Recommendation 2. Justice Case Managers would play an active role in identifying, coordinating and managing disability-related supports for an individual, whereas advocates play an important role in assisting adults with cognitive disability, through actions such as requesting reasonable adjustments, to fully participate in the criminal justice system.

Individual advocates should be independent of the criminal justice system, and should have a focus on empowering a person with cognitive disability to participate, to have their voice heard, and to have their rights upheld. This can include advocacy support for issues within the criminal justice system, or other systems that they are navigating at the same time (such as the NDIS).

In Queensland, there are some advocacy services for people with disability that already operate in this area.

For example, QAI operates the Justice Support Program, which is funded by DOJ. The program supports people with cognitive impairments who are over the age of ten to connect with legal services, understand court processes and bail conditions, and help people to advocate for their needs.<sup>72</sup>

However, the funding provided to the program is flexible, meaning that the target cohort and eligibility criteria may change.

QAI also operates Advocacy Inside, a recent initiative that provides advocacy services to people with disability who are in custody at Woodford and Arthur Gorrie Correctional Centres. This program can support people to 'access disability supports, reasonable adjustments and community connections both while in custody and as they transition back into the community'.<sup>73</sup>

In 2026, a new Victims Advocate Service will commence, which will be funded by the Queensland Government.<sup>74</sup> The service, while not specific to adults with cognitive disability, will provide 'targeted support pathways and resources to guide victims of crime from the start to the end of the justice process'<sup>75</sup> and will connect them with existing support services.

The Public Advocate heard examples of many situations where advocates played a crucial role in assisting people to understand and participate in processes, communicate their needs and preferences, and have their rights respected.

However, stakeholders also reported that there are still barriers to accessing these services. There is often high demand for advocacy services, which are also constrained by limited resources. As a result, not all people who require assistance are able to access an advocacy service.

Improving access to specific criminal justice system advocacy services for people with cognitive disability could support them to navigate this system, to obtain the support that they require to participate equally in criminal justice processes, and ensure that their rights are upheld and their voices heard throughout the process. These outcomes contribute to a fair and equal justice system.

The Disability Royal Commission highlighted the importance of advocacy services for people with disability in its final report and made a number of relevant recommendations.<sup>76</sup> This included the recommendation that the Australian Government and state and territory governments improve

---

<sup>72</sup> Queensland Advocacy for Inclusion, *Criminal justice*, <<https://qai.org.au/criminal-justice/>>.

<sup>73</sup> Queensland Advocacy for Inclusion, *Criminal justice*.

<sup>74</sup> Department of Youth Justice and Victim Support, *Victims Advocate Service*.

<sup>75</sup> Department of Youth Justice and Victim Support, *Victims Advocate Service*.

<sup>76</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 6: Enabling autonomy and access', *Final report*, 2023, recommendations 6.21 - 6.23, pp. 25-26.



data collection and reporting on the need for advocacy (in relation to both met and unmet needs).<sup>77</sup> It also recommended that governments ensure long-term and stable funding for disability advocacy programs to ensure this demand can be met.<sup>78</sup>

### Recommendation 5

The Queensland Government should expand the funding available to advocacy agencies to provide disability justice advocacy support to people with cognitive disability who are involved in the criminal justice system.

This funding should be in addition to the legal assistance funding currently provided by DOJ and the Queensland Disability Advocacy Program, to increase the availability of these services to those who need it.

The proposed expansion should facilitate access to advocacy services for both victims of crime and alleged offenders.

The criteria for access to the service could include risk factors such as inadequate existing supports and repeat contact with the criminal justice system.

Consideration should also be given to the development of a new service focused on advocacy for those involved in the justice system. This service could be modelled on the New South Wales Justice Advocacy Service (JAS), which is provided by the Intellectual Disability Rights Service.

The JAS is funded by the New South Wales Government to provide support to people with cognitive impairment, including victims of crime, witnesses, suspects or defendants.<sup>79</sup> It assists people to exercise their rights and participate in the criminal justice process. The supports provided include assistance for people with cognitive impairment who are interacting with police, are in police custody, or are attending court or legal appointments.<sup>80</sup>

### Section 216 of the *Criminal Code 1899* (Qld)

In the Queensland *Criminal Code 1899* (Qld), section 216 makes it a crime to engage in sexual activity with a person who has an 'impairment of the mind'.

The provision states that:

- (1) Any person who engages or attempts to engage in unlawful penile intercourse with a person with an impairment of the mind is, subject to subsection (3)(a) and (b), guilty of a crime, and is liable to imprisonment for 14 years.
- (2) Any person who —
  - (a) unlawfully and indecently deals with a person with an impairment of the mind; or
  - (b) unlawfully procures a person with an impairment of the mind to commit an indecent act; or
  - (c) unlawfully permits himself or herself to be indecently dealt with by a person with an impairment of the mind; or
  - (d) wilfully and unlawfully exposes a person with an impairment of the mind to an indecent act by the offender or any other person; or
  - (e) without legitimate reason, wilfully exposes a person with an impairment of the mind to any indecent object or any indecent film, videotape, audiotape, picture, photograph or printed or written matter; or
  - (f) without legitimate reason, takes any indecent photograph or records, by means of any device, any indecent visual image of a person with an impairment of the mind;

<sup>77</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 6: Enabling autonomy and access', recommendation 6.22, pp. 25-26.

<sup>78</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 6: Enabling autonomy and access', recommendation 6.21, p. 25.

<sup>79</sup> Department of Communities and Justice, *Justice Advocacy Service Evaluation*, evaluation report, prepared by Ernst & Young, New South Wales, 2023.

<sup>80</sup> Department of Communities and Justice, *Justice Advocacy Service Evaluation*.



is, subject to subsections (3)(c) and (3A), guilty of a crime, and is liable to imprisonment for 10 years.

A defence exists if the relevant behaviour did not 'constitute sexual exploitation'.<sup>81</sup>

While section 216 was intended to protect people with cognitive disability, it effectively criminalises any sexual activity with a person with an 'impairment of the mind', even if they have the ability to understand and consent to such activities.

It has been argued that this law is no longer used to actively prosecute people in Queensland, however statistics provided by DOJ indicate that, for the period 1 July 2020 to 30 June 2025, there were 239 charges (in relation to 96 defendants) lodged at the Queensland District Court for an offence pursuant to section 216 of the *Criminal Code 1899*. During this time period, there were also 23 defendants convicted of 94 charges in relation to this offence.

The Public Advocate has previously explored section 216 in detail in a discussion paper published in 2022 titled: *A discussion of section 216 of the Queensland Criminal Code: A call to review the criminalisation of sexual relationships involving people with 'an impairment of the mind'*.

The Public Advocate believes that this provision needs to be repealed to allow people with cognitive disability to engage in consensual sexual relationships.

To achieve this, while also safeguarding people with cognitive disability, one option would be to enact provisions similar to those in the Victorian *Crimes Act 1958*. Sections 52B, 52C, 52D and 52E of the *Crimes Act 1958* make it illegal for a person who provides treatment or services, or who works for a service provider who provides treatment or services, to a person with 'cognitive impairment or mental illness' to engage in sexual conduct with that person.

### Recommendation 6

Section 216 of the *Criminal Code 1899* (Qld) should be replaced by a provision that makes it illegal for a person who provides treatment or support services to a person with cognitive disability to engage in sexual conduct with that person.

## Fines

Stakeholders reported that adults with cognitive disability can be disproportionately affected by fines that are received for minor offences.

Many adults with cognitive disability already experience financial hardship due to a range of systemic factors such as barriers to employment, the costs of medication and treatment, and additional costs that are often incurred to access appropriate housing and transport.

As was noted by Advocacy for Inclusion in the Australian Capital Territory:

People with disability, particularly people with intellectual or cognitive disabilities, are more vulnerable to being fined in the first place and to accruing multiple fines. They are less likely to be able to pay fines or to negotiate the processes available to contest them or otherwise mitigate their impact.

Inappropriate, inadequate or non-existent support can mean that official correspondence are either not received or not understood. This can also result in the inability to provide relevant documentation or use online systems that are heavily dependent on complex forms and written information. These aspects, among others, ensure that many vulnerable people fall between the cracks of inflexible administrative systems that are insensitive to specific contexts and circumstances.<sup>82</sup>

<sup>81</sup> *Criminal Code Act 1899* (Qld) s 216(4)(b).

<sup>82</sup> Advocacy for Inclusion, *Submission no. 003 to the Standing Committee on Justice and Community Safety, Australian Capital Territory Legislative Assembly, Inquiry into Penalties for Minor Offences and Vulnerable People*, 19 April 2023, p. 4.



While fines are sometimes viewed as a 'lighter' penalty, many people accumulate a number of small fines, leading to a cycle of debt. This can serve to entrench disadvantage and involvement in the criminal justice system rather than preventing reoccurrence and recidivism.

There are opportunities to consider alternative approaches to low-level offending that can assist in reducing the financial burden, while still holding people accountable.

### Recommendation 7

The Queensland Government should identify and promote alternative ways of holding adults with cognitive disability accountable for low-level non-violent offending that do not result in incarceration or the accumulation of significant fines.

## OPCAT

The Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is an international agreement that aims to strengthen protections for people who are in places where they are deprived of their liberty.<sup>83</sup> This includes prisons, watchhouses, and other places of detention, where people with cognitive disability are often overrepresented.<sup>84</sup>

OPCAT was ratified by the Australia Government in 2017.

Under OPCAT, the Australian Government agreed to establish 'National Preventative Mechanisms' (NPMs) in each jurisdiction to visit and monitor places of detention. The United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the United Nations Subcommittee) must also be allowed to conduct visits to these settings.

As was discussed in the Public Advocate's detention and forensic system discussion papers, Australia is yet to fully implement OPCAT. Australia was given the extended deadline of January 2023 to do so, however failed to meet this deadline.

In Queensland, under the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2022*, the United Nations Subcommittee can visit places of detention across the state.

However, Queensland, along with New South Wales and Victoria, has not yet nominated an NPM.

In 2022, the Inspector of Detention Services was established in Queensland. The functions of the Inspector of Detention Services include reviewing and monitoring detention services and inspecting places of detention.<sup>85</sup>

Under the *Inspector of Detention Services Act 2022* (Qld), 'places of detention' include:

- (a) a community corrections centre;
- (b) a prison;
- (c) a watch-house;
- (d) a work camp;
- (e) a youth detention centre.<sup>86</sup>

<sup>83</sup> United Nations, *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, 57th session of the General Assembly of the United Nations, A/RES/57/199, (adopted 18 December 2002).

<sup>84</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 11: Independent oversight and complaint mechanisms', *Final report*, 2023.

<sup>85</sup> *Inspector of Detention Services Act 2002* (Qld) s 8(1).

<sup>86</sup> *Inspector of Detention Services Act 2002* (Qld) s 6.



This does not extend to facilities such as the FDS or AMHSs, where people are often held involuntarily.

While the definition of places in which people are deprived of their liberty is broad under OPCAT, the Australian Government indicated an initial focus on 'primary places of detention', which would include, amongst other settings:

- closed facilities or units where people may be involuntarily detained by law for mental health assessment or treatment (where people are held for equal to, or greater than, 24hrs).
- closed forensic disability facilities or units where people may be involuntarily detained by law for care (where people are held for equal to, or greater than, 24hrs).<sup>87</sup>

The Disability Royal Commission made a number of recommendations in relation to the implementation of OPCAT, including in relation to:

- 'Enshrining key provisions of OPCAT in legislation';<sup>88</sup>
- 'Resourcing and wider definition of places of detention';<sup>89</sup>
- 'Legislating National Preventive Mechanisms';<sup>90</sup>
- 'Designating National Preventive Mechanism bodies';<sup>91</sup>
- 'Improved consistency and coordination';<sup>92</sup> and seeking a
- 'Disability inclusive approach to implementing OPCAT'.<sup>93</sup>

Full implementation of OPCAT would provide an important safeguard for adults with cognitive disability who are being held in places of detention.

### Recommendation 8

The Queensland Government, in consultation with the Commonwealth government, should ensure that Australia's OPCAT obligations are able to be met in relation to places of detention in Queensland. This includes adequate monitoring of the detention of adults with cognitive disability in Queensland forensic and mainstream custodial settings.

## Sector-specific recommendations

### Police

#### Support during interactions with police

Throughout this project, stakeholders reported that people with cognitive disability need greater access to support during police interviews. This includes people who are suspected of committing a crime, or are being interviewed as a victim of, or witness to, a crime.

<sup>87</sup> Commonwealth Ombudsman, *Implementation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT): Baseline assessment of Australia's OPCAT readiness*, report no. 3, 2019, pp. 8–9.

<sup>88</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 11: Independent oversight and complaint mechanisms', p. 110.

<sup>89</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 11: Independent oversight and complaint mechanisms', p. 110.

<sup>90</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 11: Independent oversight and complaint mechanisms', p. 110.

<sup>91</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 11: Independent oversight and complaint mechanisms', p. 110.

<sup>92</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 11: Independent oversight and complaint mechanisms', p. 111.

<sup>93</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 11: Independent oversight and complaint mechanisms', p. 111.



The *Police Powers and Responsibilities Act 2000* (Qld) provides safeguards for all people being questioned by police, including the right to speak to a lawyer, friend, or relative, and have a lawyer, friend or relative present during questioning.<sup>94</sup>

If a police officer suspects that a person has 'impaired capacity' they must not question the person unless they (if practicable) have allowed the person to speak privately to a support person and the support person is present during the questioning.<sup>95</sup>

In the context of the *Police Powers and Responsibilities Act 2000*, a 'person with impaired capacity' refers to:

a person whose capacity to look after or manage the person's own interests is impaired because of either of the following—

- (a) an obvious loss or partial loss of the person's mental functions;
- (b) an obvious disorder, illness or disease that affects a person's thought processes, perceptions of reality, emotions or judgment, or that results in disturbed behaviour.<sup>96</sup>

However, in practice, it has been reported by stakeholders that people with cognitive disability are not always able to access this support. This may be due to a police officer not identifying that a person has a relevant disability, or not offering these supports.

Stakeholders also suggested that the requirement for a person to have an 'obvious loss' or 'obvious disorder' may create a barrier to the identification of people who should have access to a support person, because many cognitive disabilities are 'invisible' and people can develop methods of masking disability.

Additionally, adults with cognitive disability may not be aware of their rights and therefore not request access to this support.

### **Recommendation 9**

Section 422 of the *Police Powers and Responsibilities Act 2000* (Qld) should be amended to include a stronger statement of the entitlement of an adult with cognitive disability to have a support person present during any police interview.

There are also opportunities to improve access to a support person through the introduction of a support program for adults with cognitive disability who do not have someone that they can contact for assistance in these circumstances.

### **Recommendation 10**

The Queensland Government should trial the operation of an independent police interview support and assistance program that is available to people who appear to have a significant cognitive disability and who do not have anyone available to support them while being interviewed by police.

The aim of the program above would be to ensure that adults with cognitive disability have support to engage optimally and accurately in police interviews and to ensure that they are not disadvantaged.

<sup>94</sup> *Police Powers and Responsibilities Act 2000* (Qld) ss 418- 419.

<sup>95</sup> *Police Powers and Responsibilities Act 2000* (Qld) s 422.

<sup>96</sup> *Police Powers and Responsibilities Act 2000* (Qld) sch 6.



This interview support program should be available to victims, witnesses, suspects and defendants who have an apparent cognitive disability, to facilitate the exercise of their rights and enable their participation in the criminal justice system.

The proposed reform could be modelled on Victoria's Independent Third Person (ITP) program, which provides support for people with cognitive impairment during police processes, including during interviews.<sup>97</sup> In Victoria, an ITP may support the person with disability by:

- facilitating communication between the person and police
- providing assistance to contact a lawyer, relative or friend if requested
- informing police if they observe that the person does not fully understand their rights or circumstances at any stage of the process
- ensuring the person understands the questions asked by police, which may involve requesting the police to rephrase a question
- requesting a break during an interview if the person is becoming distressed or is unable to concentrate.<sup>98</sup>

ITPs do not provide legal advice.

Further discussion on the ITP program can be found in the Public Advocate's policing discussion paper.

The recommended trial should ideally occur in at least one urban and one regional centre. It could see support people engaged as volunteers, as occurs with Victoria's ITP program,<sup>99</sup> or as paid casual staff.

The coordination and operation of each pilot site could be determined by a tender process.

### **Improving interactions between police and people with cognitive disability**

While independent support is needed to facilitate improved interactions during police interviews of adults with cognitive disability, stakeholders also identified a range of other challenges in, and opportunities to improve, interactions with police more generally.

As was noted previously, a recurring issue raised by stakeholders, including people with lived experience of disability, was adults with cognitive disability feeling that they were not heard or were not treated with respect during police interactions. This was identified for victims of, and witnesses to, crime as well for people who were suspected offenders.

This was also identified as a critical issue in research undertaken in Victoria, which found that people with acquired brain injuries reported disrespectful treatment across the criminal justice system. The study identified that, for a criminal justice system to be fair and respectful for people with ABI and other complex needs, the following features must be present:

- Respectful language
- Clear, understandable communication (in oral and written forms)
- Capacity to recognize disability and/or need for adjustments
- Availability of supports/reasonable adjustments
- Willingness to provide assistance.<sup>100</sup>

Stakeholders also reported that police responses could serve to escalate, rather than deescalate situations. This can lead to scenarios where police have been called to provide assistance, for example in the situation of a mental health or behavioural crisis, but result in the adult with cognitive disability being charged with an offence.

---

<sup>97</sup> Office of the Public Advocate Victoria, *Independent Third Persons*, <<https://www.publicadvocate.vic.gov.au/opa-volunteers/independent-third-persons>>.

<sup>98</sup> Office of the Public Advocate Victoria, *Independent Third Persons*.

<sup>99</sup> Office of the Public Advocate Victoria, *Independent Third Persons*.

<sup>100</sup> Centre for Innovative Justice (RMIT University) and Jesuit Social Services, *Enabling justice for people with an acquired brain injury*, p. 57.



## Recommendation 11

The Queensland Police Service (QPS), in the next iteration of its Disability Service Plan, should include a suite of new commitments in order to improve interactions between QPS members and people with cognitive disability. The next plan should be drafted in consultation with people with cognitive disability, and should incorporate the following elements:

- a) a review of key internal policies, procedures and operational guidelines, including the Police Manual, to ensure that the needs of people with cognitive disability are adequately addressed;
- b) a review of relevant external-facing QPS documentation and related communications materials, to ensure that they are accessible to people with cognitive disability;
- c) expanded training offerings and requirements for new and continuing QPS members, which should involve direct interaction with people with cognitive disability;
- d) a planned program to improve the capacity of QPS to explain in an accessible way (including, where necessary, in languages other than English) the implications of any formal interactions between QPS members and people with cognitive disability; and
- e) the establishment of a process by which QPS is able to be advised about an adult's care and support needs, where this would help to optimise any police interactions with them.

In Queensland, under the *Disability Services Act 2006* (Qld), all Queensland Government departments must develop and implement disability service plans that outline how service delivery issues for people with disability will be addressed.<sup>101</sup>

QPS's Disability Service Plan 2023-2026 was revised in August 2025, after the release of this project's policing discussion paper. This plan includes a number of relevant actions, including:

- 'Provide disability training to all employees to build our capability to respond to and support our service users with disability, their families, and carers.'<sup>102</sup>
- 'Strengthen communication supports for people with disability when in contact with police.'<sup>103</sup>
- 'Review QPS referral systems to ensure they provide timely access to support services, including for our service users with disability, their families, and carers.'<sup>104</sup>
- 'Partner with victim-centric organisations to promote services that support victims of crime who have a disability.'<sup>105</sup>
- 'Review the accessibility of QPS forms, documents, and supporting information.'<sup>106</sup>
- 'Improve communication access to police services for people with disability through the National Relay Service.'<sup>107</sup>
- 'Review QPS data collections in relation to people with disability.'<sup>108</sup>

QPS also highlights relevant activities undertaken in its Disability Service Plan annual reports, including referrals to support services for people with disability, strengthening communication support for people with disability, and disability inclusive training for staff.<sup>109</sup>

Recommendation 11 in this report seeks to build on the work being undertaken by QPS to improve services to people with disability to ensure that these actions also include a focus on adults with cognitive disability, who are at particular risk of poor experiences and outcomes during interactions with police.

<sup>101</sup> *Disability Services Act 2006* (Qld) s 221.

<sup>102</sup> Queensland Police Service, *Disability Service Plan 2023-2026*, revised August 2025, p. 8.

<sup>103</sup> Queensland Police Service, *Disability Service Plan 2023-2026*, p. 8.

<sup>104</sup> Queensland Police Service, *Disability Service Plan 2023-2026*, p. 9.

<sup>105</sup> Queensland Police Service, *Disability Service Plan 2023-2026*, p. 9.

<sup>106</sup> Queensland Police Service, *Disability Service Plan 2023-2026*, p. 9.

<sup>107</sup> Queensland Police Service, *Disability Service Plan 2023-2026*, p. 10.

<sup>108</sup> Queensland Police Service, *Disability Service Plan 2023-2026*, p. 10.

<sup>109</sup> Queensland Police Service, *Disability Service Plan 2023-2026, 2023-24 Annual Report; Disability Service Plan 2023-2026, 2024-25 Annual Report*.



The recommended improvements to the QPS Disability Service Plan would require QPS to undertake a range of actions to further improve interactions between police and adults with cognitive disability who are victims, witnesses, or alleged perpetrators, and could include QPS:

- Developing and rolling out situation-based training for all new police recruits to enable them to respond optimally when they interact with people who have significant support needs, including those who are victims, witnesses or offenders.
- Establishing a state-wide disability outreach program to ensure that operational police officers interact regularly with Queenslanders with disability, including adults with significant cognitive disability. This could also involve meeting with disability service providers, representative organisations and advocacy groups.
- Promoting and tracking the use of diversionary alternatives to prosecution, including formal cautioning when adults with significant cognitive disability are involved in low-level offences that would be unlikely to result in convictions.
- Developing a simple fact sheet to assist police officers to identify when a person has significant support needs, and to guide police officers in making support service referrals. This could be modelled on existing fact sheets, such as the document prepared by the Justice Advocacy Service.<sup>110</sup>
- Developing and promoting the use of information cards in multiple formats on which people can indicate any support and communication needs that they have.
- Establishing a clear process by which individuals, and their supporters, are able to have an individual's support and communication needs recorded on a database that is accessible to operational police officers. Possibilities could also be explored for how this information could be shared, where appropriate and with consent, with other agencies and services involved in the criminal justice system, including courts.

Additionally, the review of documents to be undertaken by QPS as part of the current Disability Service Plan should include summonses and bail notices, which stakeholders have noted can be difficult to understand, and therefore comply with, for people with cognitive disability. The use of Easy English and person-centred design principles should be used to make critical documents easier to understand.

## Courts

This project has confirmed previous reports that going to court is a stressful, overwhelming, and confusing experience for adults with cognitive disability, whether they are a victim of, or witness to, a crime, or a defendant.

This can make it difficult to comply with any requirements and participate in the process, which has implications for the person's human rights.

As was noted in the *Criminal Procedure Review* report:

Being able to broadly understand and be involved throughout criminal proceedings is known as 'effective participation'. It is directly linked to the right to a fair trial recognised at common law and in sections 31 and 32 of the *Human Rights Act 2019*.<sup>111</sup>

There are a number of opportunities to improve court accessibility and court processes to enable adults with cognitive disability to participate equally with others and have their rights upheld.

## Accessibility

Across the consultations held as part of this project, stakeholders identified challenges with the accessibility of courts and court processes. The feedback provided reiterated many of the issues

---

<sup>110</sup> Intellectual Disability Rights Service (IDRS), *Information for police officers*, fact sheet, <<https://idrs.org.au/site18/wp-content/uploads/2021/09/Police-Fact-Sheet-Version-2-1.pdf>>.

<sup>111</sup> M Shanahan, *Criminal Procedure Review — Magistrates Courts*, Volume one: Summary report, 2023, p. 54.



identified in previous reports on Queensland courts and the criminal justice system.<sup>112</sup> Further information about these issues can be found in the Public Advocate's courts discussion paper.

The *Criminal Procedure Review* report was published in 2023 following a comprehensive review of the *Justices Act 1886* (Qld). It recommended the introduction of new legislation in relation to criminal procedures in Queensland Magistrates Courts, which could include a provision stating that:

The object of the Act is to set out a contemporary and effective criminal procedure framework for the Magistrates Courts that:

- a) simplifies court procedures and encourages better understanding for all court users;
- b) enables matters to be dealt with in a way that is accessible, fair, just, consistent and timely ...<sup>113</sup>

The report also highlights the importance of making reasonable adjustments and recommends the inclusion of guiding principles in the proposed new legislation, which would include:

In criminal proceedings, the court and every participant act in a way that promotes:

- (a) A defendant's right to a fair trial according to law;
- (b) The interests and safety of victims and witnesses; and
- (c) The needs of individual court users, and makes reasonable adjustments to meet those needs.<sup>114</sup>

DOJ is currently undertaking public consultation in relation to the accessibility of courts and tribunals across Queensland, which will 'inform the next steps of the Courts and Tribunals Accessibility project'.<sup>115</sup> It is anticipated that this work will assist the Queensland Government in addressing recommendation 8.11 made by the Disability Royal Commission, which proposed that:

The Commonwealth, state and territory criminal justice systems should provide information about seeking or making adjustments and supports and services for people with disability, and the circumstances in which they may be required. This information should be made available to judicial officers, legal practitioners and court staff, including through practice notes or bench books.<sup>116</sup>

DOJ has also engaged QDN to facilitate engagement with people with lived experience of disability to inform this work.

Following the consultation that is being undertaken, DOJ should continue with work aiming to improve the accessibility of courts, and implement identified reforms to ensure equal access and participation for adults with cognitive disability who are victims, witnesses, or defendants.

## Recommendation 12

The Queensland Government should expand on the work undertaken as part of the Department of Justice's 'Accessible Courts and Tribunals' initiative to ensure that Queensland's courts and tribunals are accessible to people with cognitive disability.

The program of reforms should include measures to improve the physical accessibility of facilities for adults with cognitive disability, as well as programs and services to improve cognitive accessibility,

<sup>112</sup> See for example: Australian Human Rights Commission, *Equal before the law: Towards disability justice strategies*; Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 8: Criminal justice and people with disability'; K Ellem et al., *Insights from people with lived experience of disability and the justice system*; M Shanahan, *Criminal Procedure Review — Magistrates Courts*; Queensland Advocacy Incorporated (QAI), *Disabled justice: The barriers to justice for persons with disability in Queensland*; *dis-Abled Justice: Reforms to justice for persons with disability in Queensland*.

<sup>113</sup> M Shanahan, *Criminal Procedure Review — Magistrates Courts*, p. 120.

<sup>114</sup> M Shanahan, *Criminal Procedure Review — Magistrates Courts*, p. 120.

<sup>115</sup> Department of Justice, *Accessible Queensland Courts and Tribunals: Consultation paper*, 2025, p. 1.

<sup>116</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 8: Criminal justice and people with disability', p. 153.



including navigational aids and assistance, pictorial and video presentations on 'how things work', and the use of assistive communication technologies where appropriate.

Consideration should also be given to how documents can be made easier to understand, and therefore also easier to comply with. This could include, but is not limited to, documents such as notices to appear, and bail notices and conditions.

For example, a 'notice to appear' could be titled a 'notice to appear in court' to provide greater clarity about the purpose of the document.

Contact information such as a phone number and email address could also be added to forms to more easily enable people who require assistance or clarification to identify the correct contact point for further information.

Given the accessibility issues identified across the criminal justice system more broadly, and the potential advantages of addressing these at a system-wide level, the Public Advocate's recommendation could also be extended to system-wide reform, where the principles underpinning the courts accessibility strategy are also applied to other elements of the system, including detention and policing. This would support a comprehensive approach to improving accessibility for adults with cognitive disability across the Queensland criminal justice system as a whole.

### **Support during the court process**

As was noted above, the court process can be very stressful, overwhelming, and difficult to understand for adults with cognitive disability, including for victims, witnesses, and defendants.

Giving evidence can be a particularly challenging experience. Adults with cognitive disability may not understand or be able to respond to the questions asked. They can also experience difficulty with the types of leading or closed questions that are often used during cross-examination. They may also be more likely to agree with the questions or suggestions of lawyers when they do not understand what is being said.

Some lawyers, magistrates and judges may benefit from additional training to assist with understanding and identifying cognitive disability and providing the types of adjustments that would assist people to respectfully participate in the justice process.

Stakeholders also reported that many adults with cognitive disability are not given the opportunity to provide evidence as their credibility as a witness may be questioned due to their disability or related behaviours.

Research with Queensland judges, magistrates, and tribunal members has shown that non-disclosure of conditions associated with neurodiversity also affects assessments of the credibility of witnesses and the perceived reliability of their testimony.<sup>117</sup> As was noted by the researchers:

One respondent explained that a witness before them gave evidence in a stilted and distracted manner, with no eye contact, and that without the witness's disclosure of ADHD and ASD they would have attributed reduced weight to their testimony (R 11). Another respondent said that knowing a witness's diagnosis of post-traumatic stress disorder (PTSD) made it easier for them to understand why the witness acted and spoke the way that they did. Consequently, they did not construct their interpretation based on how the witness acted and spoke (R 13). Disclosure places overt neuroatypical characteristics in context, minimising the risk of misconceptions and erroneous assumptions about a witness's credibility and the reliability of their evidence.<sup>118</sup>

---

<sup>117</sup> D Bozin, KA Sullivan, V Denault, C Kennon, L Craddock & R Hews, 'Judicial perspectives on neurodiversity in Queensland courts, tribunals and commissions: Experiences with disclosure and witness credibility', *Australian Journal of Social Issues*, 2026, pp. 1–12.

<sup>118</sup> Bozin et al., 'Judicial perspectives on neurodiversity in Queensland courts, tribunals and commissions: Experiences with disclosure and witness credibility', p. 6.



This is a particular concern for adults with cognitive disability, who may be reluctant to disclose their disability, or who, for a range of reasons, may not have been assessed or diagnosed as having a cognitive disability.

Adults with cognitive disability may also experience difficulties in demonstrating their competency to give evidence due to the nature of the legal process. These issues were explored further in the Public Advocate's victims and witnesses discussion paper.

Respondents in the Queensland research noted above highlighted the usefulness of intermediaries, including the benefit of their advice in regards to question structures to ensure that witnesses are not confused.<sup>119</sup>

As was noted previously, the QIS is only able to assist eligible prosecution witnesses in child sexual offence matters, however some out-of-scope referrals may be considered.<sup>120</sup>

Extending the program could facilitate more people with cognitive disability benefiting from this communication support and enable additional evidence to be communicated and considered by the courts where this might not previously have been possible.

The Queensland Law Reform Commission recently recommended that the QIS apply to witnesses to homicide and domestic violence offences.<sup>121</sup>

The recommendation below suggests that this support be made available to adults with cognitive disability who are witnesses to any indictable offence.

### **Recommendation 13**

The Queensland Government should trial an extension of the Queensland Intermediary Scheme so that it is available to adults with significant cognitive disability who are witnesses to any indictable offence.

There are also opportunities to provide further support to adults with cognitive disability to enable them to demonstrate competency and to give evidence.

### **Recommendation 14**

The *Evidence Act 1977* (Qld) should be amended to enable greater flexibility for people with cognitive disability to be supported to give evidence.

The Australian Law Reform Commission made a similar recommendation in its report titled *Equality, Capacity and Disability in Commonwealth Laws*, namely that:

The *Crimes Act 1914* (Cth) should be amended to provide that a witness who needs support is entitled to give evidence in any appropriate way that enables them to understand questions and communicate answers.<sup>122</sup>

---

<sup>119</sup> Bozin et al., 'Judicial perspectives on neurodiversity in Queensland courts, tribunals and commissions: Experiences with disclosure and witness credibility'.

<sup>120</sup> Queensland Courts, *Queensland Intermediary Scheme*.

<sup>121</sup> Queensland Law Reform Commission, *Just, clear and modern: Reformed criminal defences for Queensland, Review of particular criminal defences*, Summary report, December 2025.

<sup>122</sup> Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws*, Final report, ALRC report 124, 2014, p. 227.



The importance of providing appropriate support and considering this support in making determinations of a person's decision-making ability was also highlighted by the Disability Royal Commission in its final report.<sup>123</sup>

The Queensland Law Reform Commission is currently undertaking a review of the *Evidence Act 1977* (Qld), including its scope, operation and suitability.<sup>124</sup> Recommendation 14 noted above could be considered as part of this review.

Another possible reform for consideration would be to insert a provision in the Queensland *Evidence Act* that reworks section 13 of the *Evidence Act 1995* (NSW) along the following lines: A person is competent to give evidence about a fact if they are able, with support where this is required, to understand a question about a fact and to give an answer that can be understood.

One of the significant implications of this reform would be a greater preparedness for QPS to obtain evidence from adults with cognitive disability about crimes, particularly people who need to be supported to provide evidence. With greater flexibility for people to be supported to give evidence in court, QPS would be encouraged to obtain evidence from people who previously might not have been thought were able to provide admissible evidence. This would be an important legal and practical reform for adults with cognitive disability, especially for victims of crime who have a cognitive disability.

### **Support to understand court hearing outcomes**

In addition to people with cognitive disability experiencing communication challenges during court processes, stakeholders raised significant concerns that court proceedings can be fast and difficult to follow for adults with cognitive disability. As a result, they may not understand what is being discussed, what is happening, or the outcomes of the process. Critically, adults with cognitive disability may not understand what they need to do or what is going to happen next, which can create significant anxiety and lead to challenges with complying with any orders that are made.

#### **Recommendation 15**

The Queensland Government should ensure that a court support officer is available to any adult with an apparent cognitive disability immediately following a court hearing, so that information about the hearing, including the terms of any order, can be explained in an accessible way.

This court support officer should take a person-centred approach, ensuring that information is provided in simple to understand terms, in appropriate language, and in a way that is tailored to the needs of each individual.

The support should be made available not only to adults who have a known cognitive disability, but also to those who are suspected to have a cognitive disability.

This could assist people who are victims, witnesses or alleged perpetrators to understand what can be a complex process and any outcome that has implications for them. It could also improve compliance with any orders made, for example bail orders.

### **Preventing a cycle of minor offences**

As noted earlier, a number of stakeholders discussed how adults with cognitive disability can become caught in a cycle of offending, particularly in relation to minor offences. They noted that this can often occur, and the cycle can become reinforced, in situations where people have insufficient supports in place in the community.

<sup>123</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 6: Enabling autonomy and access'.

<sup>124</sup> Queensland Law Reform Commission, *Evidence Law Review*, <<https://www.qldrc.qld.gov.au/reviews/evidence-law-review>>.



Often it is not until the offending behaviour becomes more serious, over time, that the need for supports is identified or actions are taken to facilitate their provision, if this occurs at all.

This view was shared by a number of people with lived experience, who believed that more support in the community would have helped them to avoid further interactions with the criminal justice system.

While the need for additional community-based support can often be identified during a person's engagement with the criminal justice system, there can be challenges with linking people into appropriate services in a timely way.

### **Recommendation 16**

The *Penalties and Sentences Act 1992* (Qld) should be amended to enable Queensland courts to require an offender, as a condition of their release or the making of a community-based order, to actively engage with one or more services described in a Justice Plan.

The aim of a justice plan is to link people to important services to help reduce the likelihood of reoffending.

This could be similar to the use of justice plans in Victorian courts. These plans can be used for offenders with intellectual disability to specify treatment services that they must engage with as a condition of a community corrections order or when a person is released on adjournment.<sup>125</sup>

It would also be important to evaluate the use and outcomes of justice plans to ensure their effectiveness.

### **Victim impact statements**

Victim impact statements are statements made by victims of crime about the harm that has been caused to them by the offence.<sup>126</sup> These statements are used to inform the court about the effect of the relevant crime on the victim during the sentencing of an offender who has been found guilty of an offence.<sup>127</sup> The victim may be able to read the statement aloud to the court, or the prosecutor may read it aloud, which is intended to have a therapeutic benefit for the victim.<sup>128</sup>

The right to make a victim impact statement is included in the Charter of Victims' Rights, which states that:

An affected victim may make a victim impact statement under the *Penalties and Sentences Act 1992* for consideration by the court during sentencing of a person found guilty of an offence relating to the relevant offence.<sup>129</sup>

A victim impact statement can be prepared by the victim or another person if, due to their age or impaired capacity, a victim is unable to give the statement.<sup>130</sup>

Some stakeholders reported that there are opportunities to improve the accessibility of the victim impact statement process for adults with cognitive disability. It is also important that adults with cognitive disability receive sufficient support to prepare a victim impact statement if they wish to do so.

<sup>125</sup> *Sentencing Act 1991* (Vic) s 80.

<sup>126</sup> *Penalties and Sentences Act 1992* (Qld) s 179I.

<sup>127</sup> *Penalties and Sentences Act 1992* (Qld) s 179K.

<sup>128</sup> *Penalties and Sentences Act 1992* (Qld) 179M.

<sup>129</sup> *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) sch 1 div 2 s 7.

<sup>130</sup> *Penalties and Sentences Act 1992* (Qld) s 179L(1).



The Queensland Victims' Commissioner is currently undertaking a review of the Queensland Charter of Victims' Rights, including consideration of the accessibility of this Charter.

### Recommendation 17

The Queensland Government, in liaison with the Queensland Victims' Commissioner, should ensure that the process by which Victim Impact Statements are made is accessible to people with cognitive disability, and that victims of crime who have a cognitive disability are supported to prepare Victim Impact Statements where they wish to do so.

As noted above, under the current legislation, another person may prepare a victim impact statement if the victim cannot give this statement due to their age or impaired capacity.

Consideration could be given to expanding this to enable another person to prepare a victim impact statement on behalf of any adult with significant cognitive disability where this is the adult's preference.

### Forensic system (mental health and disability)

One of the main objects of the *Mental Health Act 2016* (Qld) is to 'enable persons to be diverted from the criminal justice system if found to have been of unsound mind at the time of committing an unlawful act or to be unfit for trial ...'.<sup>131</sup>

Determinations about a person's soundness of mind or fitness for trial can be made by the Magistrates Court or the Mental Health Court.

Section 172 of the *Mental Health Act 2016* gives magistrates the power to dismiss a complaint for a simple offence where:

- (a) a complaint for a simple offence is to be heard and determined by a Magistrates Court; and
- (b) the court is reasonably satisfied, on the balance of probabilities, that the person charged with the offence—
  - (i) was, or appears to have been, of unsound mind when the offence was allegedly committed; or
  - (ii) is unfit for trial.

DOJ provided the Public Advocate with statistics that indicate that the use of this provision has increased, with the number of offences dismissed more than doubling over the past five years.

Cases in which there are questions about the cognitive abilities of the defendant can proceed to the Mental Health Court, where a decision will be made about whether the adult was of unsound mind at the time of the offence or whether they are temporarily or permanently unfit for trial.

Where an adult is considered to have been of sound mind and fit for trial, the matter will be referred back to the trial court.

If the Mental Health Court determines that the person is temporarily unfit for trial, the court must make either a Treatment Support Order or a Forensic Order, which lasts until the person has been reassessed and a new decision is made.

If the court determines that the defendant was of unsound mind at the time the offence was committed, or that they are permanently unfit for trial, the proceedings against the person are discontinued (dismissed) and the court may make:

- a Forensic Order;
- a Treatment Support Order; or

<sup>131</sup> *Mental Health Act 2016* (Qld) s 3(1)(b).



- no order.<sup>132</sup>

## Indefinite detention

Once an adult is placed on a Forensic Order, the MHRT conducts a review of the person's order every six months to determine whether the person should be released from the order or the conditions of the order changed.

However, there are no limiting terms on how long a person can be subject to a Forensic Order. This means that an adult with a cognitive disability on an inpatient Forensic Order may be held indefinitely in the FDS or at an AMHS.

Many adults with cognitive disability on inpatient Forensic Orders (despite not having been convicted of an offence) end up spending more time in detention than they would have spent in detention had they been convicted of the offence in question.

A further consequence of the current system in Queensland is that innocent people with cognitive disability may end up pleading guilty to a charge in the mainstream court system to avoid diversion to the Mental Health Court and a potentially longer, or indefinite, period of detention. This issue is explored further in the Public Advocate's forensic system (mental health and disability) discussion paper.

There have been numerous calls for the practice of indefinite detention to be ceased and limits imposed on the potential period of detention, including by the Disability Royal Commission,<sup>133</sup> the United Nations Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>134</sup> the Australian Human Rights Commission,<sup>135</sup> and the Australian Law Reform Commission.<sup>136</sup>

### Recommendation 18

The *Mental Health Act 2016* (Qld) should be amended to require that a maximum period of detention is specified in any forensic order made following a finding that a person is unfit for trial or was of 'unsound mind' at the time of the alleged offence.

This is consistent with recommendation 8.12 made by the Disability Royal Commission, which calls for the National Statement of Principles Relating to Persons Unfit to Plead or Not Guilty by Reason of Cognitive or Mental Health Impairment to be revised to include (amongst other things) these principles:

- Indefinite detention is unacceptable and laws providing for it should be repealed.
- Where an order for detention is made, there should be a maximum term of detention nominated beyond which the person cannot be detained (a 'limiting term').
- The limiting term should not exceed the court's assessment of the sentence it would have imposed on the defendant had the person been found guilty of the offence in an ordinary trial of criminal proceedings.<sup>137</sup>

The Australian Law Reform Commission similarly proposed that:

<sup>132</sup> *Mental Health Act 2016* (Qld) s 131.

<sup>133</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 8: Criminal justice and people with disability', p. 155.

<sup>134</sup> United Nations Committee Against Torture, *Concluding observations on the 6th periodic report of Australia*, CAT/C/AUS/CO/6, Geneva, Switzerland, 5 December 2022, p. 12.

<sup>135</sup> Australian Human Rights Commission, *Submission to the Senate Community Affairs Reference Committee, Parliament of Australia*, Inquiry into the indefinite detention of people with cognitive disability and psychiatric impairment in Australia, March 2016.

<sup>136</sup> Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws*.

<sup>137</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 8: Criminal justice and people with disability', p. 155.



... limits on the period of detention should be set by reference to the period of imprisonment likely to have been imposed, if the person had been convicted of the offence charged. If they are a threat or danger to themselves or the public at that time, they should be the responsibility of mental health authorities, not the criminal justice system. The framework for detention and supervision orders should be flexible enough to ensure that people transition out of the criminal justice system, in a way consistent with principles of community protection and least restriction of rights.<sup>138</sup>

As the Australian Law Reform Commission, among other agencies, has noted, if a person, at the expiration of their maximum term, were still considered to constitute a significant threat to public safety (or themselves), their freedom of movement would only be able to be curtailed according to non-criminal justice mechanisms that currently exist, where relevant criteria are met, for instance via compulsory mental health treatment or restrictive practice usage.

Consideration could also be given to adopting mechanisms in use in other jurisdictions, such as civil containment in Victoria under supervised treatment orders. These can be made in relation to people with intellectual disability:

- who have 'previously exhibited a pattern of violent or dangerous behaviour causing serious harm to another person or exposing another person to a significant risk of serious harm';<sup>139</sup>
- who pose 'a significant risk of serious harm to another person which cannot be substantially reduced by using less restrictive means';<sup>140</sup> and
- who will benefit from the proposed treatment.<sup>141</sup>

Arguments have been made that such orders might also be available in relation not only to people with intellectual disability, but to people with other disabilities, such as acquired brain injuries, on the condition that feasible treatment possibilities exist.

In a situation where a person is subject to a Forensic Order following a finding that they are unfit to plead or are not guilty by reason of mental impairment, it would make sense, as the 2014 review of the *Queensland Mental Health Act 2000* noted, that an accused or their representative ought to be able to request a special hearing into whether the person actually committed the act in question.<sup>142</sup>

Consideration should also be given to publishing Mental Health Court decisions to enable a better understanding of the cohort coming through this system.

### **Approaches to disability in the forensic system (mental health and disability)**

Section 147 of the *Mental Health Act 2016* (Qld) requires that responsibility for a person on a Forensic Order (Disability) must reside with either the FDS or an AMHS.

A critical concern for stakeholders was that, due to the limited capacity of the FDS, most adults with cognitive disability on Forensic Orders (Disability) fall under the responsibility of AMHSs. This means that adults with cognitive disability, including those who do not have a dual diagnosis of mental illness, remain managed by mental health services and clinicians who may have limited expertise in working with people whose disability is not mental illness-related.

As noted, stakeholders also raised concerns about the governance, structures and models used within the forensic disability system, and its overall effectiveness in addressing disability-related needs. They also highlighted the challenges associated with demonstrating that relevant risk factors have been addressed to enable adults with cognitive disability to return to the community.

Overall, stakeholders felt that there were limited opportunities for rehabilitation and habilitation for adults with cognitive disability who entered the forensic system (mental health and disability), leading to people remaining in this system for extended periods of time.

<sup>138</sup> Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws*, p. 210.

<sup>139</sup> *Disability Act 2006* (Vic) s 193(1A)(a).

<sup>140</sup> *Disability Act 2006* (Vic) s 193(1A)(b).

<sup>141</sup> *Disability Act 2006* (Vic) s 193(1A)(c).

<sup>142</sup> Queensland Health, *Review of the Mental Health Act 2000 Discussion paper*, May 2014.



## Recommendation 19

The Queensland Government should redesign Queensland's forensic disability laws, governance arrangements and practices to establish a modern forensic disability system that is capable of delivering high quality service interventions while ensuring community safety. This should include:

- a) redesigning the governance mechanisms concerning the care provided to people on Forensic Orders (Disability);
- b) requiring people on Forensic Orders (Disability) to be provided with:
  - i. behaviour change services to enable their risk to the community to be minimised, and
  - ii. identified pathways to potentially having their orders revoked;
- c) repealing the *Forensic Disability Act 2011* (Qld) and replacing it with modern forensic disability legislation that does not unduly medicalise the behaviour change service needs of people within its ambit; and
- d) the establishment of at least one new forensic disability facility in the state's north.

Revised governance arrangements could see the Chief Psychiatrist having responsibility for the provision of services, and measurement of service outcomes, to people on Forensic Orders (Mental Health).

The Director of Forensic Disability could have oversight responsibility for the provision of services, and measurement of service outcomes, to people on Forensic Orders (Disability).

Ideally, Forensic Orders (Disability) would be catered for in remodelled forensic disability legislation, rather than in the *Mental Health Act*, and the court responsible for making Forensic Orders (Disability) would preferably be labelled, when sitting in this capacity, the Disability Court, rather than the Mental Health Court.

If Forensic Orders (Disability) were to remain under the auspices of Queensland Health, there would need to be governance arrangements and services that have a specific disability (rather than health) focus. Clear pathways would need to be developed for people to potentially have their orders revoked. For example, opportunities for step down facilities could be explored to facilitate community reintegration for adults on these orders.

This aligns with recommendation 8.12 made by the Disability Royal Commission, namely that:

The Australian Government and state and territory governments should build their capacity to provide step-down options, including medium and low secure and community-based accommodation options, for the placement of people in the forensic system to facilitate their progressive transition to less restrictive environments.<sup>143</sup>

Perhaps even more important than these administrative separations would be a requirement for judges responsible for the making of Forensic Orders (Disability) to have some level of expertise in forensic disability, including knowledge of contemporary models of therapeutic intervention.

The capacity of the FDS should also be increased, including through the establishment of a new facility in North Queensland. This would provide opportunities for people living outside of South East Queensland to receive services in a location closer to their community and existing support networks. This could also facilitate an easier eventual return to the community for adults with cognitive disability from North Queensland.

The remodelled legislation should adopt the social, rather than medical model of disability, and not unduly medicalise the behavioural change service needs of people within its ambit.

---

<sup>143</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 8: Criminal justice and people with disability', p. 155.



Consideration should also be given as to how to address the gap in funding for the supports needed to meet the conditions required by the MHRT to mitigate a person's risk of reoffending where this is not met by the NDIS. The NDIS does not fund support to address the risk of offending or criminogenic behaviours.<sup>144</sup> Alternative funding is therefore required to improve opportunities for adults with cognitive disability to move out of inpatient facilities and into community-based arrangements.

## Detention

Feedback from stakeholders reiterated concerns raised in previous reports, including the Disability Royal Commission's final report, that people with disability, including cognitive disability, can face additional barriers and risks during their time in a correctional centre.

Upon entry to a correctional centre, a person completes an induction program and an IRNA. The IRNA identifies 'any risks or needs relating to a prisoner upon admission',<sup>145</sup> including whether they may pose a risk to themselves, a risk to others, or may be at risk from others.

The Hayes Ability Screening Index (HASI) is also typically conducted as part of this process.<sup>146</sup> The HASI is a standardised screening tool that is used to identify potential intellectual disability. A short version of the HASI is currently used as part of this initial screening in correctional centres in Queensland.

However, stakeholders noted that this screening and assessment is limited in scope, and is not sufficient to identify all types of cognitive disability, or fully understand a person's support needs.

A lack of culturally appropriate screening tools and processes was also noted by stakeholders.

Timely identification of disability and support needs for people with cognitive disability entering prison is critical. It ensures that appropriate supports and adjustments can be put in place to improve safeguards and provide equal opportunities for participation in rehabilitation and other programs during a person's time in prison.

The importance of appropriate assessment was also identified in a report published by the Queensland Audit Office (QAO) in July 2026, which noted that:

While QCS requires its staff to assess the safety and security risks of prisoners, it does not consistently assess their rehabilitation and reintegration risks and needs. This impacts QCS's ability to understand its prisoner cohorts and their risks and needs across correctional centres. It also impacts its ability to effectively manage prisoners and prioritise programs and services across the system.<sup>147</sup>

QAO recommended that QCS 'strengthen its planning approach to prisoner rehabilitation and reintegration',<sup>148</sup> including by:

- analysing its prisoner population to better understand the different prisoner cohorts and their risks and needs
- ensuring it has the right programs and services for the prisoner population ...<sup>149</sup>

QAO also recommended that QCS enhances the delivery of the case management provided to prisoners, including by 'ensuring all prisoners get a risk and needs assessment on entry to custody to inform their rehabilitation and reintegration support'.<sup>150</sup>

---

<sup>144</sup> National Disability Insurance Scheme, *Justice system*, Guideline, 2025.

<sup>145</sup> Queensland Corrective Services, *Custodial Operations Practice Directive, Offender pathways*, p. 2.

<sup>146</sup> Queensland Corrective Services, *Custodial Operations Practice Directive, Offender pathways*.

<sup>147</sup> The State of Queensland (Queensland Audit Office), *Rehabilitating and reintegrating prisoners*, Performance Audit Report, Report 1: 2026-27, 2026, p. 11.

<sup>148</sup> The State of Queensland (Queensland Audit Office), *Rehabilitating and reintegrating prisoners*, p. 4.

<sup>149</sup> The State of Queensland (Queensland Audit Office), *Rehabilitating and reintegrating prisoners*, p. 4.

<sup>150</sup> The State of Queensland (Queensland Audit Office), *Rehabilitating and reintegrating prisoners*, p. 4.



## Recommendation 20

Queensland Corrective Services should rigorously and reliably screen all prisoners for cognitive disability, utilising culturally appropriate custodial screening tools. Where indicated, follow-up assessments should then be undertaken to identify prisoners' disability-related support needs, which should be met in line with ensuing recommendations.

The Queensland Government should commission the development of a suite of screening tools, including tools that are culturally appropriate and enable the identification of possible cognitive disability, including intellectual disability, ABI, FASD, and mental illnesses.

This recommendation aligns with the following action included within the QCS Disability Service Plan 2022-2025:

2.1.12 Explore approaches for safer admissions to custody, including early identification of individual prisoner needs ...<sup>151</sup>

The Disability Royal Commission also recommended the development of national practice guidelines for screening in custody, noting that the guidelines and policies should:

- explain the essential elements of screening and assessment for people with disability, including a trauma-informed approach to identifying disability and the person's needs
- reduce reliance upon self-disclosure as the primary means of disability identification following admission of a person with disability to custody
- require screening upon reception into custody or shortly thereafter both for prisoners and detainees who have been sentenced and for those on remand
- promote the consistent collection of data and its use to inform system-wide responses
- encourage the development and use of culturally safe disability screening tools that address the particular needs of First Nations people with disability
- encourage the development and use of disability screening tools that are culturally appropriate for people with disability from culturally and linguistically diverse communities
- encourage investment in initial and ongoing training, education and support of staff about disability identification and awareness
- encourage collaborative practices including the engagement of clinicians to conduct assessments to identify the support needs of a person with disability in custody
- require the identification of a disability or impairment to be matched with appropriate support while in custody
- promote the use of screening outcomes to develop plans for prisoners and detainees transitioning to the community
- contribute to appropriate information sharing among agencies including court-based assessments and reports.<sup>152</sup>

In addition to providing information to assist individuals in receiving necessary supports, appropriate screening and identification of disability and related support needs will also enable a clearer understanding of the number of adults with cognitive disability who are in correctional centres. This data is important from the perspective of monitoring the number of adults with cognitive disability in prison over time and it could also be used to inform the development and provision of supports and programs to meet identified needs.

Within QCS there is a small Disability Services Team working on the service needs of prisoners with disability that has undertaken promising work in identifying and responding to the service needs of a number of prisoners with disability. This work includes screening and assessment of prisoners identified as having (or suspected of having) a disability, delivery of a program of training across the agency, and delivery of a targeted 'cognitive impairment' package as part of the Custodial Officer Entry Program to upskill new recruits. The Disability Services Team also provides specialist

<sup>151</sup> Queensland Corrective Services, *Disability Service Plan 2022-2025*, p. 12. Please note: this plan has recently been updated.

<sup>152</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 8: Criminal justice and people with disability', p. 196.



advice and support to inform frontline decision-making, policy development and complex case management across correctional centres.

The Disability Services Team has the potential to provide foundational assistance in enlivening the recommendations in this report that are directed towards QCS.

To support an improved understanding of the number of people with cognitive disability in detention, the Queensland Government should require that QCS note in its annual report the number of people with cognitive disability in correctional facilities. Where possible, this should be disaggregated by type of cognitive disability, or broad support needs, to facilitate an understanding of the need for relevant education, training and prevention programs, to be both developed and made accessible to adults with cognitive disability in prison.

### **Recommendation 21**

Queensland Corrective Services should publish data annually on the number of Queensland prisoners with cognitive disability.

The Disability Royal Commission made a similar recommendation that focused on youth detention (recommendation 8.4):

State and territory governments should ensure timely screening and expert assessment are available for individual children with cognitive disability involved in the criminal justice system (including, but not limited to, detention settings) and that they receive appropriate responses, including therapeutic and other interventions.<sup>153</sup>

This recommendation from the Disability Royal Commission also highlights the importance of screening leading to appropriate responses, including, where necessary, further assessment and the implementation of necessary adjustments and supports.

### **Access to supports and services**

As was noted across other elements of the criminal justice system, adults with cognitive disability can experience difficulties accessing appropriate supports and services, including while in prison.

The justice system is responsible for day-to-day care and support needs of adults with cognitive disability such as personal care and general supports.<sup>154</sup>

In Queensland, for some adults with cognitive disability, their needs may have to be met through the prisoner carer program. This program involves prisoners being employed to assist prisoners with disability with:

- a) cleaning the ill/infirm prisoner's cell;
- b) getting that prisoner's meal and other basic needs (e.g. reading material, etc.); and
- c) transporting the prisoner (e.g. by wheelchair, etc.) to the Health Centre or other location within the centre as needed.<sup>155</sup>

Prisoner carers are not permitted to assist with personal care such as showering, dressing, and toileting.<sup>156</sup>

<sup>153</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 8: Criminal justice and people with disability', p. 110.

<sup>154</sup> National Disability Insurance Scheme, *Justice system*.

<sup>155</sup> Queensland Corrective Services, *Custodial Operations Practice Directive, Health, Health needs*, ver. 20, 26 June 2025, p. 15.

<sup>156</sup> Queensland Corrective Services, *Custodial Operations Practice Directive, Health, Health needs*.



Previous reports have raised significant concerns about the training prisoner carers receive, the risks associated with these arrangements for prisoners with disability, and the lack of safeguards for those receiving support.<sup>157</sup>

The justice system is also responsible for reasonable adjustments to ensure supports and services are accessible to people with disability.

The NDIS can fund some supports such as:

- some assistive technology, such as a replacement prosthetic limb
- training for staff in custody, where it's specifically for [a person's] disability support needs
- capacity building supports that will help [a person when they are] released.<sup>158</sup>

Improved access to these supports can ultimately assist in promoting rehabilitation, preventing recidivism, and facilitating community safety.

In its Disability Service Plan 2022-2025, QCS committed to:

- 'Increase opportunities for prisoners with disability to engage in rehabilitation programs, and education, training and employment';<sup>159</sup> and
- 'Continue to collaborate with key stakeholders, including the NDIA, to improve the coordination of supports for NDIS participants exiting custody.'<sup>160</sup>

The reform recommendations below build on these actions with the aim of improving access to critical supports for all adults with cognitive disability in correctional facilities.

### **Recommendation 22**

Queensland Corrective Services should ensure that all prisoners with cognitive disability have access to adequate support and rehabilitation programs and services.

### **Recommendation 23**

The Queensland Government, in consultation with Queensland Corrective Services and the National Disability Insurance Agency, should ensure that prisoners with cognitive disability are able to receive the services funded by the National Disability Insurance Scheme to which they are entitled.

These services should be available to people who are on remand as well as prisoners who have been sentenced.

The Disability Royal Commission also recommended that corrective service agencies:

provide people with disability with the disability supports they require to place them in the same position, so far as feasible, as other people in custody.<sup>161</sup>

In its October 2025 response to the Disability Royal Commission, the Queensland Government accepted this recommendation in principle, noting that:

<sup>157</sup> Human Rights Watch, *'I needed help, instead I was punished': Abuse and neglect of prisoners with disabilities in Australia 2018*, 2018; K Ellem et al., *Insights from people with lived experience of disability and the justice system*.

<sup>158</sup> National Disability Insurance Scheme, *Justice system*, p. 7.

<sup>159</sup> Queensland Corrective Services, *Disability Service Plan 2022-2025*, p. 10.

<sup>160</sup> Queensland Corrective Services, *Disability Service Plan 2022-2025*, p. 10.

<sup>161</sup> Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 8: Criminal justice and people with disability', recommendation 8.1, p. 72.



The Queensland Government understands the importance of upholding the rights of people with disability in custody and will investigate opportunities in all corrective services and youth justice settings for program adjustments and support identification processes to ensure people with disability can access the disability supports they require.

The Queensland Government will investigate implementation of additional programs targeting specific needs, for example, general violence, domestic and family violence and alcohol and other drug use, which are also adapted to be delivered for people with disability ...

The Queensland Government will work to remove barriers for people with disability in custody to gain access to the NDIS. Specialist psychological services teams in custody assess new receptions, and respond to, and manage, prisoners who are at-risk or have complex support needs.<sup>162</sup>

## **Training, education and rehabilitation**

As was discussed previously, limited access to appropriate, accessible training, education and rehabilitation programs was also identified as a key issue by stakeholders. This reflects similar findings discussed in previous reviews and reports on the criminal justice system.<sup>163</sup>

Problems with their reach can be caused by programs and training provided in correctional facilities not being designed to meet the needs of people with cognitive disability, and by a lack of reasonable adjustments being made to support participation by people with cognitive disability.

Stakeholders also noted challenges with long waiting lists for some programs that can limit access. This was a particular concern for those who may be serving a short custodial sentence, who may not have an opportunity to complete a particular program that would facilitate their rehabilitation and potentially assist in preventing recidivism.

Stakeholders also noted an absence of 'life skills programs' that could assist people to develop important skills in preparation for their return to the community and help to prevent recidivism.

They also expressed concern that people on remand were often not able to participate in these programs. While participation in programs addressing behaviours related to alleged offending was not considered appropriate for people on remand, stakeholders noted that this time was an opportunity for adults with cognitive disability to learn more general skills that they could benefit from regardless of the outcome of their legal proceedings.

### **Recommendation 24**

Queensland Corrective Services should ensure that generic independent living skills development programs are available in all correctional facilities, and that these are accessible to people with cognitive disability. These programs should extend to education on financial literacy, household management and personal care.

As with recommendations 22 and 23 above, these programs should be available to prisoners on remand as well as to those who have been sentenced.

Stakeholders suggested that the programs could provide an opportunity for people to learn skills that would assist with their parenting, home management, and even the filling out of rental applications and writing of resumes.

<sup>162</sup> Queensland Government, *Queensland Government response to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Updated October 2025)*, p. 84.

<sup>163</sup> See for example: Australian Human Rights Commission, *Equal before the law: Towards disability justice strategies*; K Ellem et al., *Insights from people with lived experience of disability and the justice system*; The State of Queensland (Queensland Audit Office), *Rehabilitating and reintegrating prisoners*.



## Support for transitioning back to the community

The transition back to the community from prison is a critical time for adults with cognitive disability.

Stakeholders noted the importance of adequate preparation for a person's release from custody, and the need to ensure that appropriate housing, supports and services are in place.

There are some services available to adults with cognitive disability to assist with this transition, including:

- The Women's Reintegration Service;
- The Men's Reintegration Service;
- The Post Release Supported Accommodation Program; and
- The Next Step Home Program.

However, stakeholders noted that access to these services can be limited, and that many adults with cognitive disability have insufficient access to housing and necessary supports upon release from prison.

Stakeholders reported that there can also be challenges when a person is released from custody following a court hearing, particularly when this occurs on a Friday afternoon, as many services are closed for the weekend.

The recent report on 'Rehabilitating and Reintegrating Prisoners' by QAO also found that:

Queensland Corrective Services (QCS) does not effectively plan for and facilitate the rehabilitation and reintegration of its prisoners.

This is because it has not developed an effective delivery model to implement its strategies and case management framework across the correctional system.<sup>164</sup>

### Recommendation 25

Queensland Corrective Services, in collaboration with the Department of Housing and Public Works and the Department of Families, Seniors, Disability Services and Child Safety, should ensure that adequate planning is undertaken prior to any person with cognitive disability being released from custody, so that the person has appropriate housing, and is able to access relevant support services, upon their release.

### Recommendation 26

Queensland Corrective Services, in collaboration with the Department of Families, Seniors, Disability Services and Child Safety, should ensure that people with cognitive disability have immediate access to a support worker upon their release from custody, whose role is to assist the person, if this is needed, to access relevant services.

Adequate planning for a person's release is critical to their likely reintegration to society.

The proposed role of the support worker in recommendation 26 would extend to ensuring access by a released prisoner to housing and services in situations where adequate planning has not occurred.

---

<sup>164</sup> The State of Queensland (Queensland Audit Office), *Rehabilitating and reintegrating prisoners*, p. 3.



The assistance should be for immediate and medium-term housing, not just emergency accommodation, to ensure that needs are met over a longer period of time. This will provide the best opportunity for people to return to the community successfully.

The support worker should be available to those who are released on parole or released from prison, as well as to those who are released from custody following a court hearing.

## Conclusion

Adults with cognitive disability in the Queensland criminal justice system, whether they are victims of, or witnesses to, crime, or alleged or convicted perpetrators, can experience a range of challenges with access to justice.

This report makes 26 reform recommendations which, if implemented, would improve the accessibility of the system to adults with cognitive disability.

These reforms would contribute to the critical outcomes sought by stakeholders across the consultations undertaken for this project, including access to justice, fairness, and community safety.



# Appendix 1: List of stakeholders

Stakeholders from the following organisations and agencies provided information and feedback for the purpose of this project. Many of these stakeholders participated in discussions or provided feedback on more than one occasion and in relation to multiple components of the criminal justice system.

- ADA Law/ ADA Australia
- ATSILS
- Bond University
- Capricorn Citizen Advocacy
- Caxton Community Legal Centre
- Department of Families, Seniors, Disability Services and Child Safety
- Department of Justice
- Department of Youth Justice and Victim Support
- Down Syndrome and Intellectual Disability Queensland
- Endeavour Foundation
- Ethnic Communities Council of Queensland
- Griffith University
- i'ara Specialist Support Coordination
- Legal Aid
- Lives Lived Well
- Mental Health Lived Experience Peak Queensland
- Mob 4 Mob
- Multicap
- Neami National
- North Queensland Women's Legal Service
- Northside Connect
- Office of the Chief Psychiatrist
- Office of the Public Guardian
- Office of the Victims' Commissioner
- Open Minds
- Outback Independent Living
- PACT
- Palm Island Community Company
- Queensland Advocacy for Inclusion
- Queensland All Abilities Network
- Queensland Ambulance Service
- Queensland Corrective Services
- Queensland Forensic Mental Health Service
- Queensland Health
- Queensland Human Rights Commission
- Queensland Law Society
- Queensland Mental Health Commission
- Queensland Police Service
- Queenslanders with Disability Network
- Rights in Action
- Sisters Inside
- SUFY
- Sunshine Coast Citizen Advocacy
- Synapse
- Tablelands Community Justice Group
- TASC
- UnitingCare
- University of Queensland
- Victim Assist Queensland
- WWILD
- Youth Advocacy Centre

