

Adults with cognitive disability in the Queensland criminal justice system

Discussion Paper 5:
Victims and Witnesses

February 2026

Acknowledgement of Country

The Public Advocate and staff acknowledge Aboriginal and Torres Strait Islander 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 Aboriginal and Torres Strait Islander 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.

Acronyms

Adult Restorative Justice Conferencing	ARJC
Adult Forensic Interviewing	AFI
Australian Human Rights Commission	AHRC
Australian Institute of Health and Welfare	AIHW
Australian Law Reform Commission	ALRC
Charter of Victims' Rights	The Charter
Domestic and family violence	DFV
Justice Support Program	JSP
National Disability Data Asset	NDDA
National Disability Insurance Scheme	NDIS
Protect All Children Today	PACT
Queensland Intermediary Scheme	QIS
Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability	Disability Royal Commission
Targeted Action Plan	TAP
United Nations <i>Convention on the Rights of Persons with Disabilities</i>	UNCRPD



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Summary and critical questions

The Public Advocate is undertaking a project on the interactions between adults with cognitive disability and the criminal justice system in Queensland. The aim of this project is to identify opportunities for reform to ensure that the rights of adults with cognitive disability are upheld during these interactions.

This discussion paper is the fifth and final in a series of papers that will be used to guide stakeholder consultation.

The focus of this paper is victims of, and witnesses to, crime in Queensland. It aims to provide an overview of issues that may be experienced by adults with cognitive disability who interact with the criminal justice system as victims, and as witnesses.

Issues identified in the paper include:

The overrepresentation of adults with cognitive disability as victims of crime

This issue is driven by:

- In private homes:
 - The heightened vulnerability of an adult with cognitive disability when an intimate partner or family member is also the person's primary carer.
 - The assumption, on the part of a perpetrator, that an adult with cognitive disability may be unable to report a crime.
 - Community services not recognising violence or abuse against an adult with cognitive disability who is living with family.
- In shared home environments:
 - Instances of violence or abuse being viewed as a service incident or behavioural challenge and consequently not being reported to police.
 - Challenges experienced by adults with cognitive disability when seeking to leave a shared home environment where violence or abuse may have occurred, particularly when they have complex support needs or have substitute decision makers appointed.
- Legislative definitions of family and domestic violence that do not include all relationships in which people with disability experience violence or abuse.
- The heightened vulnerability of an adult with cognitive disability to financial abuse when there is a reliance on others to make financial decisions on their behalf.
- Adult women with cognitive disability being particularly vulnerable to becoming victims of crime due to a range of factors.
- The impacts of social isolation and lack of formal and informal safeguards to assist with identifying and preventing abuse.
- The focus on reactive approaches to address the high incidence of crimes committed against adults with disability.

A reluctance to report incidences of crime

Underpinning this issue is:

- A fear among adults with cognitive disability of not being believed or being perceived as lacking credibility when they report a crime.
- Communication challenges for adults with cognitive disability that impact on them reporting crimes to police.
- A lack of awareness among adults with cognitive disability of their rights as a victim or witness.
- Limited access to alternative secure and accessible accommodation if relationships in living environments break down.



A lack of identification and recognition of support needs during criminal justice processes for victims and witnesses with cognitive disability

Parts of the system in which this occurs include:

- During police interviews, which can be particularly distressing for adults with cognitive disability, driven by:
 - Negative attitudes and discrimination by police leading to assumptions about the credibility of an adult with cognitive disability as a victim or witness.
 - A lack of recognition of the importance of an adult with cognitive disability having access to a support person during police interviews and procedures.
 - Victims potentially being misidentified as perpetrators and hence not being provided with the opportunity to tell their story.
- Courts, which can be related to:
 - A denial of an adult's legal standing due to a perception of mental incapacity, which limits their opportunity to provide evidence in court.
 - The use of disability related supports potentially leading to an assumption of mental incapacity by the court.
 - The impact of court delays on the memory and recall of an adult with cognitive disability.
 - The overwhelming nature of a courtroom setting, which can limit the participation of adults with cognitive disability in proceedings.
 - Specific communication challenges associated with the preparation of a victim impact statement by an adult with cognitive disability.
- Detention, Sentencing and Post release settings, which can be related to:
 - The availability and accessibility of restorative justice conferencing for adults with cognitive disability who are victims of crime.
 - While acknowledging that it is an opt-in model, some adults with cognitive disability may experience fear and anxiety while on a victims register.

This paper also includes 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)*.
- *The Mental Health Act 2016 (Qld)*.

Relevant recommendations, strategies and opportunities for improvement are also discussed.

The following **key questions** are posed for further discussion:

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?



Introduction

The Public Advocate

The position 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.¹

Cognitive disability

The term used to describe the people who are the focus of this paper 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.'² People may experience cognitive impairment if they have an intellectual disability, acquired brain injury, neurological disorders (such as dementia), or if they have a mental health condition.³

People with cognitive disability may experience difficulty with communication, attention, concentration, memory, thinking, and learning.⁴ Sometimes a person 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 and decisions.

Other terms used in reports, legislation, policies, research and official documents referenced in this paper include; '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 particular 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.

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

¹ *Guardianship and Administration Act 2000* (Qld) s 209.

² Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Executive summary: Our vision for an inclusive Australia and recommendations, *Final report*, September 2023, p. 316.

³ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Executive summary: Our vision for an inclusive Australia and recommendations, *Final report*, September 2023, 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.

⁴ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Executive summary: Our vision for an inclusive Australia and recommendations, *Final report*, September 2023, p. 316.



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, forensic care systems and the parole system.

Adults with cognitive disability may interact with the criminal justice system for a number of reasons, including as witnesses, as victims of crime (the focus of this paper), 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 very recently in the work of the Disability Royal Commission.⁵

In short, adults with cognitive disability, and indeed people with disability generally, 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.⁶

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

Adults with cognitive disability in the Queensland criminal justice system

This project aims to explore the various issues faced by adults with cognitive disability in Queensland when they interact with the criminal justice system and identify opportunities for reform to ensure that their rights are upheld during these interactions.

The Public Advocate will be seeking feedback from key stakeholders and asking questions focusing on issues relevant to adults with cognitive disability.

A series of discussion papers has been developed and used as the basis for consultations. The papers and consultations explore key elements of a person's potential involvement with the criminal justice system, and include these topics (in addition to victims of, and witnesses to, crime):

- policing (released in April 2024);
- courts (released in February 2025);
- forensic system (mental health and disability) (released in August 2025); and
- detention (released in February 2026).

The findings from the consultations will inform the development of a reform recommendations report for consideration by the Queensland government.

Scope of this paper

The focus of this discussion paper is the experiences of adult victims and witnesses with cognitive disability in Queensland.

The paper includes three questions to guide targeted consultations that will be undertaken with stakeholders.

⁵ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Overview of responses to the Criminal justice system issues paper*, 2020.

⁶ *Ibid.*, p. 3.



Overview

In Queensland, under the *Human Rights Act 2019* (Qld), 'Every person is equal before the law and is entitled to the equal protection of the law without discrimination'.⁷ The Act also includes a number of 'Rights in criminal proceedings'⁸ and rights in relation to a 'Fair hearing'.⁹

'Equal recognition before the law'¹⁰ and 'Access to justice'¹¹ are also amongst the rights outlined in the *United Nations Convention on the Rights of Persons with Disabilities* (UNCRPD), which Australia has ratified.

However, despite these commitments and protections, there are a range of issues and challenges that adults with cognitive disability may experience that can affect their participation in police and court processes and their equal access to justice as a victim of, or witness to, a crime in Queensland.

The journey for 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 alleged offender 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 alleged offender 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 alleged offender 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. The information that can be provided is dependent on the nature of the crime committed and the

⁷ *Human Rights Act 2019* (Qld) s 15(3).

⁸ *Human Rights Act 2019* (Qld) s 32.

⁹ *Human Rights Act 2019* (Qld) s 31.

¹⁰ United Nations, *Convention on the rights of persons with disabilities*, GA Res 61/106, 76th plen mtg, UN Doc A/RES/61/106 (adopted on 13 December 2006), Article 12.

¹¹ *Ibid.*, Article 13.



offender's sentence and includes information about where the offender is 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.

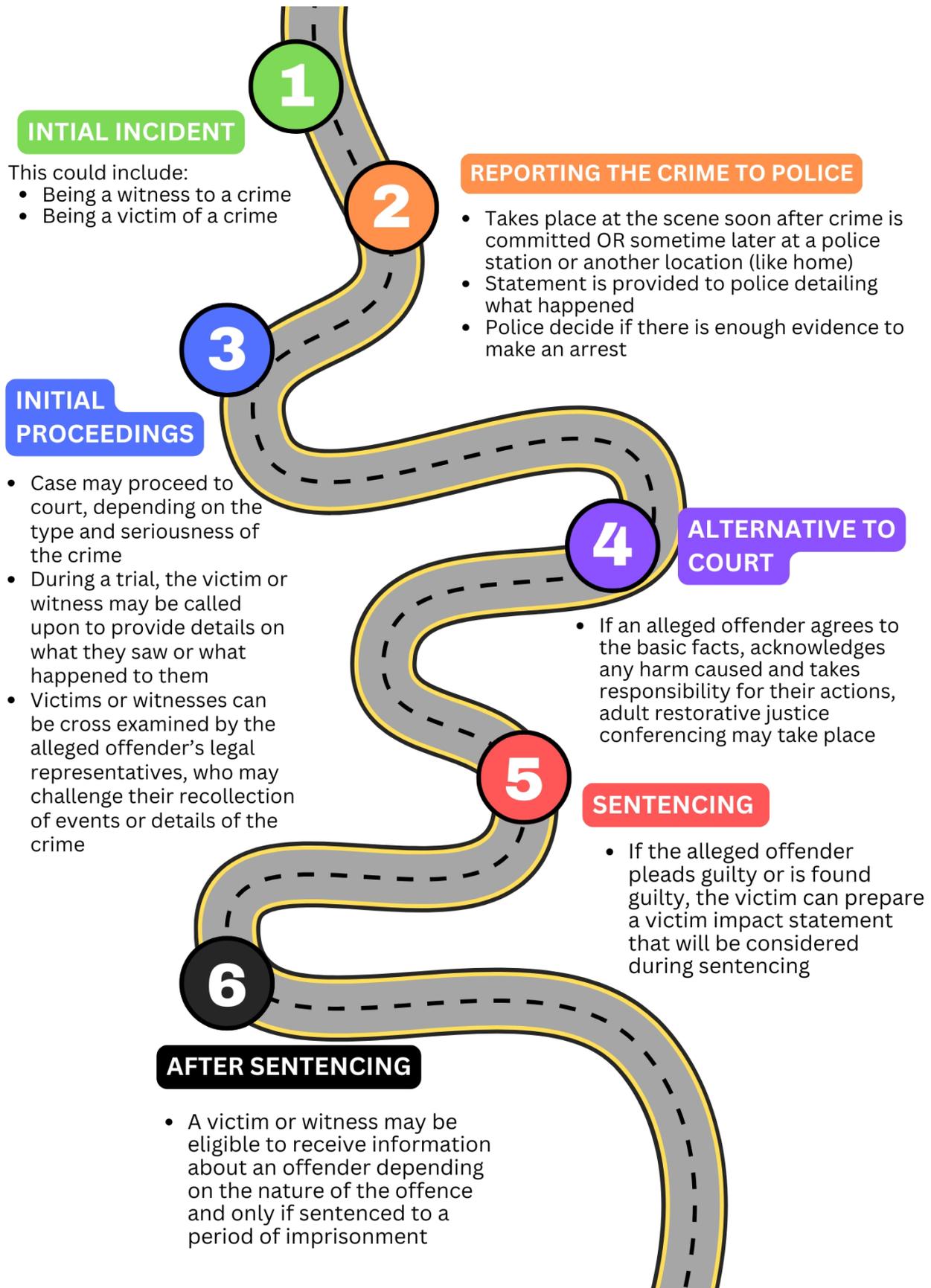
Like the victim's statement, the information provided by a witness is also used by the police to determine if evidence is sufficient to charge a person with a crime.

Should an alleged offender 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.



Summary – the victim and witness journey



Issues

Overrepresentation of adults with cognitive disability as victims

While specific data is not available on the rates of crime against adults with cognitive disability in Queensland, people in this cohort are, as described below for other jurisdictions, generally over-represented as victims of crime.

The Disability Royal Commission found that people with cognitive and/or psychosocial disability are disproportionately victims of abusive or violent criminal conduct.¹² In its final report, the Disability Royal Commission drew on data from a study conducted by the National Disability Data Asset (NDDA) justice test case. This pilot study, which included 2.8 million people, linked several New South Wales datasets with relevant national data to determine the extent to which people with disability have contact with the state justice system.¹³ The concluding data indicated that 'nearly one in three people in New South Wales accessing a core disability support were victims of crime reported to police between 2009 and 2018.'¹⁴ Analysis of the NDDA data showed that 'people with disability aged 10 to 64 were 2.4 to 2.7 times as likely to be victims of violent crime than the general population in this period.'¹⁵

This aligns with other studies that highlight people with disability as being more likely to be victims of crime than other groups in the general population.¹⁶

In relation to violent crime, the Australian Institute of Health and Welfare (AIHW) reported that 47% of adults with disability have experienced violence after the age of 15, compared with 36% of those without disability.¹⁷

It is also estimated that women with disability are between four and 10 times more likely to be victims of sexual violence,¹⁸ with between 39 and 60 percent of women with cognitive disability being sexually assaulted before the age of 18.¹⁹

Some of the factors that contribute to this over-representation are detailed below.

People with cognitive disability in family homes

The inherent power imbalance that exists when an intimate partner or other family member is also an adult's primary carer can increase the vulnerability of a person with cognitive disability living in a private or family home to becoming a victim of crime.²⁰ The Disability Royal Commission reported instances of family members in supporting roles exerting complete control over the life of a person with cognitive disability. This control included 'restricting their movement; controlling their finances; limiting their access to supports; and subjecting them to emotional or physical abuse when they challenge this control.'²¹

¹² Royal Commission into Violence, Abuse, Neglect and Exploitation, *Criminal Justice System Issues Paper*, January 2020, p. 1.

¹³ Royal Commission into Violence, Abuse, Neglect and Exploitation, 'Volume 3: Nature and extent of violence, abuse, neglect and exploitation', *Final Report*, September 2023, p. 237.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ Victorian Equal Opportunity and Human Rights Commission, *Beyond doubt: The experiences of people with disabilities reporting crime – Research findings*, July 2014, p. 6.

¹⁷ Australian Institute of Health and Welfare, *People with disability in Australia 2022: in brief*, 2019.

¹⁸ Australian Bureau of Statistics, *Disability and Violence*, <<https://www.abs.gov.au/statistics/people/crime-and-justice/focus-crime-and-justice-statistics/latest-release>>, 2021.

¹⁹ R Bowman, J R Scott, T L Morris, 'Sexual abuse prevention: a training program for developmental disabilities service providers', *Journal of Child Sexual Abuse*, vol. 19(2), 2010, pp.119-127.

²⁰ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Overview of responses to the Violence and abuse of people with disability at home Issues paper*, March 2022, p. 3.

²¹ *Ibid.*



The assumption on the part of a perpetrator that an adult with cognitive disability may be unable to report a crime can heighten the adult's vulnerability to being victimised by the person providing support.

Adding to this are instances where community services may not recognise the extent of the violence or abuse against a person with cognitive disability, making that person vulnerable to further criminal acts. For example, when a person with a disability enters a hospital with injuries following a violent incident, the hospital may contact the family member or guardian who committed the violence or abuse without consulting with, or obtaining the consent of, the person with disability.²² This may lead to further violence or abuse of the victim, via reprisals or retaliatory activities by their carer.

People with cognitive disability in shared home environments

While many people with cognitive disability reside in the community with family or friends, some, and particularly those with more complex conditions, reside in places that are shared with other people with disability and where disability and/or health supports are provided. These residences include disability accommodation services, supported accommodation, boarding houses and hostels, and residential aged care facilities.²³

Australia's Disability Strategy 2021–2031 recognises that people with disability living in shared environments such as group homes or boarding houses are more likely to experience violence.²⁴ The National Disability Insurance Scheme (NDIS) Quality and Safeguards Commission has also acknowledged that Australians living in group homes have been subjected to sexual misconduct, coercion, serious injury, abuse and neglect.²⁵

A report prepared for the Australian Human Rights Commission (AHRC) further identified a 'strong association between institutionalisation and violence whereby residents in such facilities are significantly more vulnerable to violence than those not in such facilities.'²⁶

The Disability Royal Commission referenced a stakeholder who described violence, abuse, neglect and exploitation of people with disability as being 'pervasive in group homes' and that it occurs 'almost as part of the day-to-day practices in these environments.' The stakeholder observed that 'this normalisation of abuse is underpinned by a lack of understanding of key concepts like respect, dignity and human rights.'²⁷

For the most part, specialist accommodation facilities are operated by government and nongovernment agencies. These agencies tend to be viewed as being responsible for managing any issues that arise in these environments internally, and to not require intervention by police or the legal system.²⁸ Any incidences of domestic and family violence (DFV) are often characterised as social, rather than legal, problems.²⁹ As a result, the victims of abuse are not afforded the opportunity to report such crimes to police.

People with cognitive disability who have become victims of crime in these accommodation settings may have entered the accommodation, initially, through a decision made by a substitute decision-maker, which may prevent them being readily able to relocate on their own volition. It may also be difficult for them to leave due to the nature of the disability supports they rely on, or the limited availability of alternative accommodation or service providers, or both.

²² Association of Employees with Disability Legal Centre, 'Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability', *Violence and Abuse of People with Disability at Home*, 10 February 2021, pp. 4-5.

²³ Office of the Public Advocate (Qld), *Submission to Inquiry into Support for Victims of Crime*, 3 April 2023, pp. 1-2.

²⁴ Australian Government Department of Social Services, *Australia's Disability Strategy 2021–2031*, December 2021, p. 22.

²⁵ NDIS Quality and Safeguards Commission, 'Own Motion Inquiry into aspects of supported accommodation', *Inquiry Report*, January 2023, pp. 54-55.

²⁶ DLA Piper, *Background Paper on Access to Justice for People with Disability in the Criminal Justice System*, 2013, p. 80.

²⁷ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 7: Inclusive education, employment and housing', *Final report*, September 2023, p. 64.

²⁸ P French, *Disabled Justice: The barriers to justice for persons with disability in Queensland*, Disability Studies and Research Institute for Queensland Advocacy for Inclusion, May 2007, p. 17.

²⁹ *Ibid.*



The issues surrounding the treatment of people with disability in shared living environments were explored extensively by the Disability Royal Commission, and the Inquiry into Violence, Abuse and Neglect against People with Disability in Institutional and Residential Settings conducted by the Senate Community Affairs References Committee in 2015.³⁰

Definitions of domestic and family violence

The Disability Royal Commission noted a strong theme in submissions that existing legislation associated with domestic and family violence does not protect people with disability.³¹ The scope of, and definitions in, legislation in most jurisdictions do not include disability specific abuse (such as deprivation of supports) or cover relationships in which people with disability may experience violence (such as violence committed by support workers, unpaid carers, house mates, co-residents and people in wider First Nations kinship networks).³²

In recognition of this, the Disability Royal Commission recommended that states and territories amend legislative definitions of domestic and family violence to include 'all relationships in which people with disability experience family and domestic violence, including carer and support worker relationships; and all domestic settings, including supported accommodation.'³³

Financial abuse

Financial abuse, sometimes referred to as economic abuse, describes situations where a person is subjected to certain behaviours or actions aimed at preventing or controlling their access to economic resources, causing them emotional harm or fear in addition to economic loss.³⁴ Abuse of this kind can amount to a criminal offence.

Although financial abuse can occur in a range of circumstances, this kind of abuse disproportionately affects women as compared to men.³⁵ The Australian Bureau of Statistics' Personal Safety Survey reported that women with a disability are more likely than women without a disability to have experienced economic abuse by a partner (4.6 percent compared with 2.4 percent).

Adults with cognitive disability are often more vulnerable to financial abuse as they may rely on a partner, family member or appointed attorney or administrator to make financial decisions on their behalf. As noted by the Association of Employees with Disability, a family member may illegally use a person's disability funding for their own needs, with people whose disability affects their memory being at higher risk.³⁶

³⁰ Senate Community Affairs References Committee, Parliament of Australia, *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*, November 2015.

³¹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Overview of responses to the Violence and abuse of people with disability at home Issues paper*, March 2022, p. 2.

³² *Ibid.*

³³ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 8: Criminal justice and people with disability', *Final Report*, recommendation 8.24, September 2023, p. 29.

³⁴ Australian Institute of Health and Welfare, *People with disability in Australia 2024*, 2024, p. 197.

³⁵ Parliamentary Joint Committee on Corporations and Financial Services, *Financial abuse: an insidious form of domestic violence*, December 2024, p. 7.

³⁶ Association of Employees with Disability Legal Centre, 'Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability', *Violence and Abuse of People with Disability at Home*, 10 February 2021, p. 4.



Women and girls with disability

The Disability Royal Commission noted several drivers for violence against women and girls with disability, namely:

- ableism and negative stereotypes
- accepting or normalising violence, disrespect and discrimination against people with disability
- controlling people with disability's decision making and limiting their independence
- social segregation and exclusion.³⁷

Ableism was identified as a key contributing factor to the high rate of violence against women with disability.³⁸ The Disability Royal Commission highlighted observations from stakeholders that the social system does not recognise women with disability as people to be valued and respected, and this makes them more vulnerable to becoming victims of violence, abuse and exploitation.³⁹

According to a paper prepared for the Australian Human Rights Commission, the higher rate of victimisation of women with disability has also been associated with the presence of certain personal risk factors. These include, 'dis-inhibition, desire for affection, ready compliance with authority, inability to judge others' motivations, absence of social skills to distinguish between appropriate and exploitative behaviour, feelings of helplessness and powerlessness, low self-esteem and impulsivity.⁴⁰ Over time, this has been 'associated with the social inequalities and imbalances of power, destructive stereotyping and vilification experienced by the group and the inherent vulnerabilities of the individuals involved'.⁴¹

Social isolation

Many responses to the Disability Royal Commission identified social isolation and segregation of people with disability as key factors contributing to violence and abuse, particularly in a home environment.⁴²

WWILD – Sexual Violence Prevention Association (based in Queensland) described to the Disability Royal Commission how 'a lack of safe, reciprocal, mutually supportive and affirming relationships in people's lives is a consistently underlying driver of violence'.⁴³

The lack of formal and informal mechanisms for checking in with people with disability at home can also make it difficult to identify when abuse may be occurring.⁴⁴

Reactive approaches

Sally Robinson has observed that many current approaches designed to address the overrepresentation of adults with cognitive disability as victims of crime are reactive, with a general focus on responding to instances of abuse or neglect.⁴⁵ There is a lesser focus on promoting personal safety strategies and proactive approaches to enable people with cognitive disability to protect themselves from abuse, neglect and violence, including in their home.

At a broader level, preventative health, community health and community service messages are often not tailored to, or inclusive of, the needs of people with intellectual and mental health impairments.⁴⁶

³⁷ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 8: Criminal justice and people with disability', *Final Report*, September 2023, p. 372.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ DLA Piper, *Background Paper on Access to Justice for People with Disability in the Criminal Justice System*, 2013, p. 80.

⁴¹ *Ibid.*

⁴² Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Overview of responses to the Violence and abuse of people with disability at home Issues paper*, March 2022, p. 8.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ S Robinson, 'Safe at Home? Factors Influencing the Safety Strategies Used by People with Intellectual Disability', *Scandinavian Journal of Disability Research*, vol. 16, no. 2, 2013, p.1.

⁴⁶ *Ibid.*



Reluctance to report

Credibility

A research report prepared for the Disability Royal Commission noted that many people with disability who are victims of crime expressed a fear of not being believed, or being viewed as lacking credibility when they report a crime and that 'many people who are victims of crime do not believe that the police will protect them'.⁴⁷

The Public Guardian (Queensland) has further observed the existence of a community stigma and lack of police training on the credibility of adults with cognitive disability.⁴⁸

There is also research to suggest that police officers will often make decisions about a person's credibility at a very early stage. This 'sets the course for the entire response and the victim's journey through the criminal justice system, from initial report to interview, investigation and prosecution'.⁴⁹

The Disability Royal Commission reported being made aware that authorities, such as the police and prosecutors, often do not consider violence and abuse committed against people with disability to be crimes or to be worthy of investigation or able to be prosecuted successfully.⁵⁰

These issues are compounded for women with cognitive disability who have experienced sexual violence. Women with Disabilities Australia stated that women with disabilities are often not believed when reporting sexual assault and other forms of violence.⁵¹ The Disability Royal Commission's report noted that research has indicated that police consistently hold a belief that these women 'are promiscuous and that their story is not credible'.⁵²

Given that women with disability are generally thought to be at significantly higher risk of sexual violence than others in the community, there are concerns that 'people with disability who are victims of sexual violence and other forms of violence, abuse, neglect or exploitation are far less likely to report the crime to police'.⁵³

Communication difficulties

Many people with cognitive disability may experience difficulty with communication and therefore lack the ability to make a report or be unable to adequately articulate what crime has been committed against them.

The Public Guardian (Queensland) has observed a lack of support being provided to adults with cognitive disability to have their stories about abuse communicated and believed.⁵⁴

Lack of awareness about rights

As noted above, a driver of crime against people with disability is the acceptance or normalisation in society of violence, disrespect and discrimination against people with disability. As a result,

⁴⁷ L Dowse, S Rowe, E Baldry and Michael Baker, University of NSW, *Police responses to people with disability*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, October 2021, p. 10.

⁴⁸ Public Guardian (Qld), *Submission on violence and abuse of people with disability at home*, April 2021, p. 13.

⁴⁹ Victorian Equal Opportunity and Human Rights Commission, *Beyond doubt: The experiences of people with disabilities reporting crime – Research findings*, July 2014, p. 9.

⁵⁰ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Criminal justice system issues paper*, January 2020, p. 4.

⁵¹ Women with Disability Australia, *WWDA response to violence and abuse at home issues paper*, April 2021, p. 12.

⁵² L Dowse, S Rowe, E Baldry and Michael Baker, University of NSW, *Police responses to people with disability*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, October 2021, p. 11.

⁵³ *Ibid.*

⁵⁴ Public Guardian (Qld), *Submission on violence and abuse of people with disability at home*, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, April 2021, p. 13.



people with cognitive disability may not understand that any abuse they are experiencing amounts to a crime, and their right to make a report to police.

Problems accessing information on rights in a suitable format can also hinder the ability of people with cognitive disability to both recognise that a crime has been committed and how to report it to authorities. While such information may be currently available, knowing how to access it can also be an obstacle to victims who are unsure of their rights.⁵⁵

People with cognitive disability in prison

The obstacles and issues noted above are compounded for people with cognitive disability who are incarcerated. Faced with a greater risk of being physically or sexually assaulted in a prison environment, a fear of reprisal from the perpetrator, and a lack of trust in the criminal justice system, they are even further disadvantaged and unlikely to make any allegations to authorities about any crimes that may have been committed against them.⁵⁶

Lack of housing options

The Disability Royal Commission reported that, for people with disability, the challenges of leaving a situation of violence are compounded by limited access to alternative secure and accessible accommodation.⁵⁷

The Public Guardian (Queensland) has also observed that the shortage of affordable, accessible, well-located housing can make adults with cognitive disability reluctant to report a crime committed against them by a service provider due to their reliance on that provider for mobility, food, personal care, support and transport.⁵⁸

When a perpetrator of violence is a family member or carer, adults with cognitive disability can also experience challenges in obtaining alternative accommodation to allow them to escape their perpetrator and report the violence. Homeless shelters or refuges are not always a viable option as staff may not have the training to support the complex care needs of people with cognitive disability.

Without available alternative housing options, adults with cognitive disability who have experienced abuse may be reluctant to approach police for fear they will have nowhere to live and no one to provide support for their complex needs.⁵⁹

⁵⁵ Public Guardian (Qld), *Submission to Inquiry into support provided to victims of crime*, April 2023, p. 4.

⁵⁶ Public Guardian (Qld), *Submission on the criminal justice system*, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, June 2020, p. 21.

⁵⁷ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Overview of responses to the Violence and abuse of people with disability at home Issues paper*, March 2022, p. 9.

⁵⁸ Public Guardian (Qld), *Inquiry into support provided to victims of crime submission*, April 2023, p. 4.

⁵⁹ *Ibid.*, p. 5.



Identification and recognition of cognitive disability and support needs

Police

The Disability Royal Commission reported that people with disability who have been victims of, or witnesses to, crime have had negative experiences when they seek to report these crimes to police.⁶⁰

Police interviews can be distressing and traumatic for a person with cognitive disability, particularly for someone who has been a victim of a crime.⁶¹ If they have limitations in their communication skills, people with cognitive disabilities are disadvantaged by the reliance on verbal communication by police.⁶²

The Disability Royal Commission also heard that 'women with disability are not given assistance or supports when they engage with the police. Nor are they connected to services or supports that could help them.'⁶³

The inability of police to identify disability is most acutely felt by people with so-called 'invisible disabilities' such as cognitive disability.⁶⁴

When crimes are reported and police do attend, again barriers exist, with police often not proceeding with an investigation or laying charges against alleged offenders. Reasons for this have been documented by the Australian Human Rights Commission and the Victorian Equal Opportunity and Human Rights Commission, amongst others. Both Commissions reported that negative attitudes and discrimination by police lead to people with cognitive disability being viewed as lacking credibility and reliability. The power imbalance experienced during interviews is also apparent, with reports of police using derogatory language and stereotyping victims.⁶⁵

The Disability Royal Commission also described situations where police misidentified a victim with disability as the perpetrator of a crime, rather than the victim.⁶⁶

A specific case example from a Queensland legal service described a crime being reported to police on behalf of a female victim who is deaf. When police attended, the woman appeared to be in a heightened emotional state because she is non-verbal and uses hand gestures, while, in fact, the perpetrator was very calm. As a result, police misidentified the woman as the perpetrator.⁶⁷

The Australian Law Reform Commission (ALRC), in an inquiry into the role that the justice system can play in responding to sexual violence, also recognised the need to address barriers to access and engagement with the justice system.⁶⁸

⁶⁰ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 8: Criminal justice and people with disability', *Final report*, September 2023, p. 259.

⁶¹ *Ibid.*, p. 306.

⁶² J Simpson, M Martin and J Green, *The Framework Report: Appropriate community services in NSW for offenders with intellectual disabilities and those at risk of offending*, NSW Council for Intellectual Disability, 2001, p. 24.

⁶³ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 8: Criminal justice and people with disability', *Final report*, September 2023, p. 265.

⁶⁴ Australian Human Rights Commission, *Equal Before the Law: Towards Disability Justice Strategies*, February 2014, pp. 18-19.

⁶⁵ Victorian Equal Opportunity and Human Rights Commission, *Beyond doubt: The Experiences of People with Disabilities Reporting Crime – Summary Report*, July 2014, p. 9; Australian Human Rights Commission, *Equal Before the Law: Towards Disability Justice strategies*, February 2014, p. 8.

⁶⁶ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Volume 8: Criminal justice and people with disability', *Final report*, September 2023, p. 263.

⁶⁷ *Ibid.*, pp. 264-5.

⁶⁸ Australian Law Reform Commission, 'Final Report - Safe, Informed, Supported: Reforming Justice Responses to Sexual Violence', *ALRC Report 143*, January 2025, p. 79.



Courts

In situations where crimes against people with impaired decision-making ability reach court, another set of barriers and issues are encountered.

This is, in part, demonstrated by the limited information available regarding crimes against people with impaired decision-making ability moving beyond an initial complaint or report. A number of advocates consulted during the Disability Royal Commission's research (mentioned above) indicated that they did not have 'any victims who have made it past the complaint stage'.⁶⁹

Examples of barriers faced by both victims and witnesses are detailed below.

Competency to give evidence

When appearing in court, there are rules that can deny legal standing to some individuals with cognitive or psychosocial disability, based on mental incapacity.

While a victim or witness with cognitive disability will not necessarily be considered incompetent to give evidence under the *Evidence Act 1977* (Qld), they may have difficulties in demonstrating their competency due to the inherent nature of the legal process.⁷⁰ More detail on the relevant provisions of the *Evidence Act 1977* are included in the Appendix to this paper.

The Australian Human Rights Commission has observed that people with disability who need communication supports, or have complex and multiple support needs, are more likely to have prejudicial assessments of their competency to give evidence.⁷¹

A person with cognitive disability may also face other obstacles to demonstrate competency. These include: being intimidated or confused by cross-examination; perceiving the defence lawyer as an authority figure and providing answers to questions that they think will please that person; becoming confused by court processes; not understanding the language or terminology used in court; and becoming tired and confused without frequent breaks.⁷² These issues may be used by defence lawyers to discredit the person's ability to be a competent and credible witness.⁷³

The New South Wales Law Reform Commission has observed that,

... entering the witness box, having one's capacity to give sworn or unsworn evidence tested, being sworn (if appropriate) and giving evidence will inevitably be a very lonely and very stressful experience for a person with an intellectual disability.⁷⁴

Court delays

The ALRC recognised that delays in court processes can also have a significant impact on complainants with a cognitive impairment due, in some part, to 'differences in memory processing and cognition of difficult questioning'.⁷⁵

⁶⁹ L Dowse, S Rowe, E Baldry and Michael Baker, University of NSW, *Police responses to people with disability*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, October 2021, p. 79.

⁷⁰ Public Advocate (Qld), 'For the Investigation into Access to Justice System for People with Disability', *Submission to the Australian Human Rights Commission*, August 2013, pp. 8-9.

⁷¹ Australian Human Rights Commission, *Equal Before the Law: Towards Disability Justice Strategies*, February 2014, p. 21.

⁷² Public Advocate (Qld), 'For the Investigation into Access to Justice System for People with Disability', *Submission to the Australian Human Rights Commission*, August 2013, pp. 8-9.

⁷³ Victorian Law Reform Committee, *Report of the Law Reform Committee for the Inquiry into Access to and interaction with the Justice System by People with an Intellectual Disability and their Families and Carers*, Parliamentary paper No 216, 2013, pp. 271-272.

⁷⁴ New South Wales Law Reform Commission, *Report 80 – People with an intellectual disability and the criminal justice system*, 1996, [7.17].

⁷⁵ Australian Law Reform Commission, 'Safe, informed, supported: Reforming justice responses to sexual violence', *Final report*, ALRC Report 143, January 2025, p. 412.



To address this, the ALRC recommended that 'matters involving people with a cognitive impairment who allege they have experienced sexual violence should be prioritised.'⁷⁶

Court room setting

A court room environment can be overwhelming for some people with disability. Depending on the disability, the level of noise, chaotic activity, and fluorescent lighting may be problematic.⁷⁷

The Women's Safety and Justice Taskforce observed that, for victims of crime, it can be a daunting experience to face a perpetrator in a court environment, particularly for victims of domestic and family violence.⁷⁸

There are some programs and legislative mechanisms in place in Queensland to address the challenges faced by adults with cognitive disability who need to appear in court as either a victim or a witness. Some of these are detailed below.

Accommodations for witnesses with disability

Under the *Evidence Act*, several provisions exist to better accommodate people with disability in giving evidence.

These provisions include:

- Allowing written statements or video recordings to be the primary evidence of a witness.⁷⁹
- 'Special witness' provisions that allow arrangements to be made when giving evidence in court, such as excluding certain people from the court, allowing a support person, or recording evidence prior to the proceedings.⁸⁰
- Consideration of a witness's disability when determining whether a question is an 'improper question'.⁸¹
- An 'intermediary' system where a third person can convey and explain questions and answers between the witness and the court.⁸²
- 'Protected witness' provisions where defendants are not permitted to question witnesses in person.⁸³

The appendix to this paper includes further information regarding legislation relating to victims and witnesses.

Victims of crime program

Specific to victims of crime, WWILD-Sexual Violence Prevention Association 'supports people with intellectual disabilities who are survivors of sexual violence and/or have experienced other types of crime or exploitation.'⁸⁴

The Victims of Crime program offered by WWILD provides case management by support workers 'who help people understand their options and their rights when they have been a victim of crime and support them to make informed decisions about what they would like to do and what kind of support they would like to receive.'⁸⁵

⁷⁶ *Ibid.*, p. 408.

⁷⁷ DLA Piper, *Background paper on access to justice for people with disability in the criminal justice system*, 2013, p. 89.

⁷⁸ Women's Safety and Justice Taskforce, *Hear her voice*, Vol 2, Part 1, May 2023, p. 216.

⁷⁹ *Evidence Act 1977 (Qld)*, s 21A(2)(e).

⁸⁰ *Evidence Act 1977 (Qld)*, s 21A.

⁸¹ *Evidence Act 1977 (Qld)*, s 20A(3)(b).

⁸² *Evidence Act 1977 (Qld)*, s 21AZL.

⁸³ *Evidence Act 1977 (Qld)*, ss 21N, 12O.

⁸⁴ WWILD- Sexual Violence Prevention Association Inc, < <https://wwild.org.au/>>, accessed 2 December 2025.

⁸⁵ WWILD- Sexual Violence Prevention Association Inc, *Annual Report July 2022 – June 2023*, 6 December 2023, p. 3.



Protect All Children Today

Protect All Children Today (PACT) provides court support services to children and vulnerable adult victims and witnesses, helping them throughout their legal journey. This includes preparation for court, support while giving evidence, helping with financial assistance applications, providing after court support, and facilitating referrals to other agencies and support providers so victims can find the help they need.⁸⁶

Victim impact statements

A victim impact statement is a written statement prepared by a victim that describes how the crime impacted them.⁸⁷

The judge or magistrate can use the victim impact statement to consider the effects the crime has had on the victim when sentencing the offender. Further details regarding victim impact statements and other provisions within the *Penalties and Sentences Act* can be found in the Appendix to this paper.

Writing a victim impact statement can be confronting for any victim of crime. It can be particularly challenging for someone with cognitive disability who may have communication barriers hindering their ability to put down their thoughts on paper in an articulate way.

Support services are available to help victims prepare their statements. WWILD offers specialised support for victims who have cognitive disability to navigate the legal process, including the preparation of a victim impact statement.

Restorative justice conferences

Adult Restorative Justice Conferencing (ARJC) is an alternative to a court process. It allows the person harmed by a crime and the person who caused the harm to meet and discuss what happened and how they were impacted, and to agree on what needs to be done to make things right.⁸⁸ The Department of Public Prosecutions, police or a court must refer a victim of crime to ARJC for a conference to be arranged.⁸⁹

Some common outcomes of ARJC include an apology, a payment to acknowledge suffering and/or cover costs, an agreement to attend counselling or other programs, a promise that the behaviour will not be repeated, or a donation to charity.⁹⁰

To take part in restorative justice, the alleged offender must agree to the basic facts of the case, acknowledge they have caused harm, and take responsibility for their actions.⁹¹

If no agreement is reached, or the offender doesn't comply with the terms of the agreement or they fail to attend, ARJC will usually return the matter to police or the court, who will decide the next steps. Usually, if this occurs, the matter will continue through the criminal process.⁹²

⁸⁶ Protect All Children Today, *PACT Support for Adults*, <<https://pact.org.au/pact-support-for-adults/>>, accessed 2 December 2025.

⁸⁷ *Penalties and Sentences Act 1992 (Qld)* s 179I.

⁸⁸ Queensland Government, *About adult restorative justice*, <<https://www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/settling-disputes-out-of-court/restorative-justice/about>>, updated 5 December 2025.

⁸⁹ Queensland Government, *Who arranges a conference*, <<https://www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/settling-disputes-out-of-court/restorative-justice/about>>, updated 5 December 2025.

⁹⁰ Queensland Government, *Restorative justice for people harmed by an adult*, <<https://www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/settling-disputes-out-of-court/restorative-justice/victim>>, updated 10 February 2025.

⁹¹ Queensland Government, *About adult restorative justice*, <<https://www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/settling-disputes-out-of-court/restorative-justice/about>>, updated 5 December 2025.

⁹² Legal Aid Queensland, *Adult restorative justice conferencing*, <<https://www.legalaid.qld.gov.au/Find-legal-information/Criminal-justice/Diversion-and-referral-options/Adult-restorative-justice-conferencing>>, updated 27 November 2025.



Criminal matters can be referred to ARJC at any stage of the justice process. Participation is voluntary for both the victim and the offender.⁹³

Victims are encouraged to bring a support person with them to a conference.⁹⁴ It is particularly critical that a victim with cognitive disability have a support person in attendance to ensure their understanding of what is being proposed as an outcome.

ARJC can be advantageous to adults with cognitive disability by providing the option of avoiding the trauma of a court process. However, for ARJC to provide full and equal access to justice for adults with cognitive disability, it is important that the convenor make any necessary adjustments, such as adapting the pace and structure of the conference, to ensure the victim can fully engage with the process.⁹⁵

Further information regarding adult restorative justice conferencing is included in the second discussion paper in this series, *Courts*, which is available [here](#).

Post sentencing

In Queensland, if an offender has been sentenced to prison, a correction centre, or youth detention centre, the victim is entitled to apply for information about their sentence. Further details regarding the operation of this scheme under the *Corrective Services Act*, and the *Youth Justice Act 1992 (Qld)* for offenders under 18 years of age, can be found in the appendix to this paper.

Information that can be made available to a victim can include details regarding the following:

- Sentencing changes, including the date when the prisoner is eligible for discharge or release, and the details and results of any parole applications made.
- Location, including the prisoner's location and any movement or transfer between facilities or deportation.
- Health or personal information changes, including if the prisoner changes their name or gender, or if they pass away.
- Other information, including exceptional events related to the prisoner or circumstances that could be expected to endanger a victim's safety.⁹⁶

However, the victim must be on a victims' register to have access to this information. In Queensland, a victims' register is a service provided by Queensland Corrective Services, or the Department of Youth Justice and Victim Support for offenders under 18, that informs victims of violent or sexual crimes about key events in an offender's sentence.⁹⁷

While a potentially beneficial option for victims of crime, those with cognitive disability can experience feelings of fear and paranoia by being placed on a victims register. This may discourage them from seeking information about this option, even if it would prove useful for their recovery.

⁹³ Queensland Government, *About adult restorative justice*, <<https://www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/settling-disputes-out-of-court/restorative-justice/about>>, updated 5 December 2025.

⁹⁴ Queensland Government, *Restorative justice for people harmed by an adult*, <<https://www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/settling-disputes-out-of-court/restorative-justice/victim>>, updated 10 February 2025.

⁹⁵ M Rossner, S Eales, L Bartels, K Gelb, H Taylor and R Ruddy, *Adult Restorative Justice Conferencing in Queensland: Research on Best Practice and Expansion*, 2024, p. 54.

⁹⁶ Queensland Government, *Victims registers*, <www.qld.gov.au/law/your-rights/victim-rights-and-complaints/victims-registers/adult>, updated 16 September 2025.

⁹⁷ Queensland Government, *Victims registers*, <www.qld.gov.au/law/your-rights/victim-rights-and-complaints/victims-registers>, updated 16 September 2025.



Opportunities for improvement

Many of the reports and reviews that have explored the experiences of adults with cognitive disability who interact with the criminal justice system as victims or witnesses have made targeted recommendations for improvement.

Reforms have also been made and strategies developed to address several areas of concern that have been identified above. Some of these strategies are outlined below, along with potential areas for ongoing improvement to the way in which the criminal justice system supports adults with cognitive disability as victims or witnesses.

Assessment protocols

In a submission to the *Inquiry into family, domestic and sexual violence*, People with Disability Australia recommended the creation of assessment protocols.⁹⁸ These protocols would assist police, courts and correctional institutions in identifying people with disability to determine the need for support, and the adjustment of procedures to ensure effective access to justice.⁹⁹

Disability-inclusive definition of family and domestic violence

As noted above, the Disability Royal Commission recommended the adoption of a disability-inclusive definition of family and domestic violence to facilitate improved access to justice for victims.

The recommendation is as follows:

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.¹⁰⁰

Queensland Intermediary Scheme

The Queensland Intermediary Scheme (QIS) 'aims to overcome communication barriers and create a more accessible justice system by facilitating the communication of evidence that may not otherwise be heard'.¹⁰¹

The QIS aims to:

- improve the quality of evidence;

⁹⁸ People with Disability Australia, *Submission to the House Standing Committee on Social Policy and Legal Affairs: Inquiry into family, domestic and sexual violence*, August 2020, p. 13.

⁹⁹ *Ibid.*

¹⁰⁰ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Volume 8: Criminal justice and people with disability, *Final Report*, September 2023, p. 29.

¹⁰¹ Queensland Courts, *Queensland Intermediary Scheme*,

<<https://www.courts.qld.gov.au/services/queensland-intermediary-scheme>>, updated 1 July 2025.



- give police officers, the legal community and the courts a better understanding of the needs of vulnerable witnesses;
- improve access to justice; and,
- reinforce the importance of effectively and respectfully responding to child sexual offence allegations.¹⁰²

When engaged during a police investigation, an intermediary:

1. conducts a witness assessment;
2. provides recommendations to the police officer on how best to communicate with the witness during the police interview; and
3. attends the police interview to ensure the witness understands and their evidence is understood.¹⁰³

And when engaged at the court stage, an intermediary:

1. conducts a witness assessment;
2. writes a court report with recommendations about how to best communicate with the witness;
3. participates in a 'directions hearing' where the intermediary's recommendations are discussed; and
4. attends court when the witness gives evidence to ensure the witness understands and their evidence is understood.¹⁰⁴

However, QIS services are currently limited to prosecution witnesses in child sexual offence matters who:

- are under 16; or
- have an impairment of the mind; or
- have difficulty communicating.

Potentially, there is scope for the program to be extended to other vulnerable witnesses, 'which will further improve the accessibility of the justice system to people with impaired decision-making ability'.¹⁰⁵

As part of the *Inquiry into support provided to victims of crime* the Queensland Parliament's Legal Affairs and Safety Committee stated that they looked 'forward to the possibility that the QIS could be extended to other victims of crime'.¹⁰⁶

The QIS is currently only legislated to operate in two locations - Brisbane and Cairns.¹⁰⁷ An extension of the geographical reach of the program to other areas of Queensland would also provide the opportunity for more Queenslanders to benefit from QIS services.

SupportLink

Researchers have identified a 'promising initiative'¹⁰⁸ used by the Queensland Police Service, known as 'SupportLink' or, more simply, 'Police Referrals'. This consists of an online portal that police can use to refer individuals, including, but not limited to, those with cognitive disability, to 'over 200 registered support service agencies for victim support and counselling, trauma support, domestic violence, drug and alcohol abuse, amongst others'.¹⁰⁹

¹⁰² Queensland Courts, *Queensland Intermediary Scheme*, < <https://www.courts.qld.gov.au/services/queensland-intermediary-scheme>>, updated 1 July 2025.

¹⁰³ Queensland Courts, *Queensland Intermediary Scheme*, Fact sheet, v. 4, September 2023, p. 2.

¹⁰⁴ Ibid.

¹⁰⁵ Public Advocate (Qld), *Submission to Inquiry into Support for Victims of Crime*, April 2023, p. 4.

¹⁰⁶ Legal Affairs and Safety Committee, *Inquiry into support provided to victims of crime*, Report no. 48, 57th Parliament, May 2023, p. 29.

¹⁰⁷ *Evidence (Intermediaries) Amendment Regulation 2021 (Qld)*, p. 1; Queensland Courts, *Intermediary Scheme for Qualified Communication Specialists, Application Guidelines*, updated 15 July 2025, p. 1.

¹⁰⁸ L Dowse, S Rowe, E Baldry and M Baker., University of NSW, *Police responses to people with disability*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, October 2021, p 30.

¹⁰⁹ Ibid., pp 30–31.



Review of Victim Impact Statements

The Queensland Sentencing Advisory Council (QSAC), in its 2024 report, *Sentencing of Sexual Assault and Rape: The Ripple Effect*, examined the use of victim impact statements.

The report noted a 'strong dissatisfaction among victim survivors and members of the community with respect to the victim impact statement regime.'¹¹⁰ QSAC ultimately recommended a 'comprehensive review of the victim impact statement regime under the *Penalties and Sentences Act 1992* (Qld).'¹¹¹

On 20 May 2025, the Attorney-General and Minister for Justice and Minister for Integrity, the Honourable Deb Frecklington, acknowledged 'the challenges identified by the council in relation to victim impact statements and supports a review of the legislative regime and clarifying of the roles and responsibilities of agencies involved in the preparation of these statements.'¹¹²

Queensland Police Service

While not specific to people with cognitive disability, the Queensland Police Service Strategic Plan 2025-29 recognises the opportunity to support the 'community and vulnerable groups through integrated service responses.'¹¹³ The plan also includes a commitment to strategies that 'provide culturally safe, victim-centric and trauma informed practices to support victims'.¹¹⁴

Justice Reinvestment

Justice reinvestment is the process of 'disinvesting from criminal justice agencies and reinvesting those funds into disadvantaged communities to improve education, employment, cultural and social outcomes'.¹¹⁵

While a report prepared for the Disability Royal Commission concluded that 'it is yet to be shown that Australian governments are disinvesting in criminal justice and reinvesting in communities',¹¹⁶ it does highlight that a justice reinvestment approach in Bourke (Maranguka), and a community development approach used in Walgett, have been successful in implementing positive change.

The approach adopted in Bourke is part of Justice Reinvestment NSW and includes investing time in building the cultural competency of police officers and regular collaboration with the Maranguka Community Hub.¹¹⁷ In Walgett, the focus is on directing funds towards improving police practices and increasing accountability amongst police in diverting Aboriginal young people away from the criminal justice system.¹¹⁸

In November 2025, the Queensland Government announced a commitment of \$5 million in funding over 3 years to establish community-led, place-based justice reinvestment initiatives designed to address the underlying causes of crime and reduce Aboriginal and Torres Strait Islander over-representation in the Queensland justice system.¹¹⁹

¹¹⁰ Queensland Sentencing Advisory Council, *Sentencing of Sexual Assault and Rape: The Ripple Effect*, December 2024, p. 571.

¹¹¹ Queensland Sentencing Advisory Council, *Sentencing of Sexual Assault and Rape: The Ripple Effect*, p. 578.

¹¹² Queensland Parliament, *Parliamentary Debates*, Legislative Assembly, 20 May 2025, 1208 (Hon Deb Frecklington).

¹¹³ Queensland Police Service, *Queensland Police Service Strategic Plan 2025-29*, p. 1.

¹¹⁴ *Ibid.*, p. 2.

¹¹⁵ L Dowse, S Rowe, E Baldry and M Baker, University of NSW, *Police responses to people with disability*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, October 2021, p 32.

¹¹⁶ *Ibid.*

¹¹⁷ Maranguka Community Hub, *Maranguka's Submission: Inquiry into Community Safety in Regional and Rural Communities*.

¹¹⁸ R Reeve, R McCausland, P MacGillivray (Kalkutungu) and V Robinson (Gamilaraay), 'Community-led diversion of Indigenous young people from the justice system: The role of government administrative data', *International Journal of Law, Crime and Justice*, vol. 76, 2024, p. 4.

¹¹⁹ Department of Justice, *Justice Reinvestment*, <<https://www.justice.qld.gov.au/about-us/services/first-nations-justice-office/priorities/justice-reinvestment>>, updated 11 November 2025.



Safety Targeted Action Plan

The Safety Targeted Action Plan (TAP), which forms part of Australia's Disability Strategy 2021-2031, 'sets out key actions to strengthen system design and supports to enable people with disability to receive high quality and safe services.'¹²⁰

Several of Queensland's objectives under the Safety TAP refer to the need to address factors that put people with disability at risk of harm. A key objective to address these risk factors includes 'building capability to identify and respond to risk and protective factors resulting in a person with disability experiencing, or possibly being at risk of, harm', with a focus on domestic and family violence.¹²¹ The implementation of *Queensland's plan to respond to domestic and family violence against people with disability*¹²² represents an important step towards addressing these risk factors.

Multi-agency model

The Public Guardian (Queensland) has observed that multi-agency models have the potential to enable victims to seek support and maintain safety in domestic and family violence situations.¹²³

Initiatives such as the establishment of High Risk Teams bring relevant departments together to case manage vulnerable victims of DFV and provide supports. One of the criteria that signifies high level vulnerability is disability.

However, initiatives such as High Risk Teams are currently only available when the situation falls within the definition of domestic and family violence. The Public Guardian (Queensland) has proposed the development of a multi-agency model that is specific to the needs of people with disability, whereby departments case manage, inquire, and promote supports for people with disability who are vulnerable to violence. Such a model, which would incorporate state police services, could provide education across sectors on working with people with disability, and provide an understanding of evidence across a multifaceted team of professionals.¹²⁴

Extension of preliminary complaint evidence to offences other than sexual offences

Preliminary complaint evidence relates to any disclosures by a victim about the offending that are made prior to their first formal witness statement to a police officer. The Women's Safety and Justice Taskforce (convened in Queensland in 2021 to examine the experiences of women across the criminal justice system, coercive control and domestic violence offences) flagged the need to consider the broader admissibility of preliminary complaint evidence in the *Hear her voice* report, released by the then Queensland Government in 2022.

Since that report, the *Evidence Act* has been amended to allow preliminary complaint evidence to be admissible in relation to sexual offences or domestic violence offences.¹²⁵ This allows evidence of how and when any such complaint was made by the complainant about the offences by the defendant to be admissible, which is not the case in most other situations involving other offences.

¹²⁰ Department of Social Services, 'Safety Targeted Action Plan', *Australia's Disability Strategy 2021-2031*, December 2021, p. 1.

¹²¹ Department of Social Services, 'Safety Targeted Action Plan', *Australia's Disability Strategy 2021-2031*, December 2021, p. 23.

¹²² Queensland Government, *Queensland's plan to respond to domestic and family violence against people with disability*, <<https://www.families.qld.gov.au/our-work/domestic-family-sexual-violence/end-domestic-family-violence/our-progress/enhancing-service-responses/tailoring-responses-vulnerable-queenslanders>>, updated 16 April 2025.

¹²³ Public Guardian (Qld), *Submission to Inquiry into support provided to victims of crime*, April 2023, pp. 4-5.

¹²⁴ *Ibid.*

¹²⁵ *Evidence Act 1977* (Qld), s 94A.



Adult Forensic Interviewing

An interviewing technique employed in the United States of America is an example of an innovative approach to improve the support provided to victims of crime throughout their engagement with the legal system.

Adult forensic interviewing (AFI) is an emerging practice that involves collecting evidence from victims of violent crimes in a setting designed to reduce the burden on, and secondary victimisation of, survivors.¹²⁶

A study of the practice examined a specific AFI program in the United States of America.¹²⁷ The program studied can only be established through referrals from law enforcement agencies and typically takes place within two weeks of the incident.

The program has the following features:

- Two forensic interviewers conduct the interview in a facility outside of law enforcement offices, with tele-interviews available.¹²⁸
- Each interview is video recorded, allowing survivor statements to be reviewed without requiring the interviewee to sit through additional interviews.¹²⁹
- The interviewers complete training through a nationally certified and court-recognised forensic interview program and participate in monthly peer reviews to maintain their skills.¹³⁰
- A semi-structured, standardised protocol is employed to support consistency and reliability in evidence collection.¹³¹
- The people in the room during AFIs are the interviewer, the survivor, and an interpreter when needed.¹³²
- Law enforcement agencies are required to observe all interviews live, either on-site via a closed-circuit camera or off-site via phone or video conference.¹³³
- During AFIs, law enforcement agencies are given an opportunity to provide feedback to the interviewer regarding any additional evidence that may be needed.¹³⁴
- At the conclusion of AFIs, interviewees are offered the opportunity to meet with an advocate affiliated with the adult forensic centre.¹³⁵

The study found that most participants felt AFI was beneficial to their personal lives and engagement with the criminal justice system by:

- allowing them to share their stories in more detail;
- supporting their healing journeys; and
- helping them to feel safer through resource referral.¹³⁶

¹²⁶ M E PettyJohn, A K Jacobs, K Breeden, B L Backes and L Wood, ' "I Just Really Felt I Was Heard For The First Time" Survivor Experiences With An Adult Forensic Interviewing Model', *Violence Against Women*, online first. 2025, p. 2.

¹²⁷ *Ibid.*, p. 1.

¹²⁸ *Ibid.*, p. 6.

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ *Ibid.*

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*, p. 1.



A new right for victims

The Final Report of the First Independent Review of the *Human Rights Act 2019* recommended the following in relation to victims' rights.

A new right should be incorporated into the Human Rights Act that recognises victims should be treated in a respectful and trauma-informed manner, which includes providing information in a timely manner that reduces the stress and trauma on victims.

- a. This new right should include being treated with courtesy, compassion, respect and dignity by investigatory and prosecuting agencies, and to being provided relevant information (unless a victim has elected not to receive information) in a timely manner.
- b. This new right should refer to the Charter of victims' rights (in the *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) for more detailed protections and support.
- c. In recognising a victims' right to respectful and trauma-informed engagement, the right should make mention of the need to take into account a victim's age, disability, gender identity, cultural and racial identity, religion, sexual identity, and parental, family, carer or kinship responsibilities, including a specific right to an interpreter for non-English speaking victims and a right to culturally safe processes and support. There should also be an acknowledgement that children who commit crimes are often themselves victims of violence, abuse and neglect, and provision needs to be made for this.
- d. The new right should relate to victims (and their families and any witnesses to the crime) who suffer personal (not financial/property) harm, in particular victims of serious violent crimes and for Domestic Family Violence victims in civil proceedings (who might be applying for [a] Domestic Violence Order).¹³⁷

The Queensland government, elected in October 2024, made the decision not to implement any of the 70 recommendations in this report, including the introduction of a new right for victims.¹³⁸

Charter of Victims' Rights and the Victims' Commissioner

On 1 July 2022, the Women's Safety and Justice Taskforce released its second and final report, *Hear Her Voice – Report 2 – Women and girls' experience in the criminal justice system*.

In this report, the Taskforce noted that, as criminal justice systems evolve, there is increasing recognition of victims as 'integral players in criminal justice, rather than mere bystanders'.¹³⁹ As part of the reforms to recognise this in Queensland, the existing Charter of Victims' Rights (the Charter) was declared.¹⁴⁰

The Charter, first introduced into law in July 2017 when it was included in the *Victims of Crime Assistance Act 2009* (Qld), is clarified in the *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld).¹⁴¹ The Charter details how victims of violent crime should be treated by government agencies and funded non-government agencies.

¹³⁷ S H Rimmer, 'Placing people at the heart of policy', *First independent review of the Human Rights Act 2019 (Qld)*, 30 September 2024, p. 32.

¹³⁸ Letter, from the Attorney-General and Minister for Justice and Minister for Integrity, Hon. Deb Frecklington, to the Clerk of the Parliament, Mr. Neil Laurie 26 March 2025 enclosing a report by Professor Susan Harris Rimmer, dated 30 September 2024, titled 'Placing People at the Heart of Policy: First Independent Review of the Human Rights Act 2019 (Qld) – Final Report', 26 March 2025, ref no: 5825T231.

¹³⁹ Women's Safety and Justice Taskforce, *Hear Her Voice – Report 2 – Women and girls' experience in the criminal justice system*, 2022, p. 137.

¹⁴⁰ Victims' Commissioner and Sexual Violence Review Board Bill 2024, 'Explanatory Notes', 2024, p. 1.

¹⁴¹ *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld), Sch 1.



The Charter outlines:

- the appropriate treatment of victims, such as the right to be treated with respect and dignity, and the right to privacy
- the right to be given information about available support services and what can be done in response to the crime
- victims' rights in the criminal justice system
- the right to be kept informed of the progress of a police investigation and any prosecution
- rights when attending court as a witness
- the right to make a victim impact statement for the court to consider during sentencing of an offender if they are found guilty
- rights when an offender is imprisoned
- the right to have any property taken as evidence returned
- the right to make a complaint to the agency responsible, or to the Victims' Commissioner if these rights are not upheld.¹⁴²

In May 2024, a Queensland Victims' Commissioner position was also established, whose role includes promoting and protecting victims' rights and investigating complaints from victims if they believe their Charter rights have not been upheld.¹⁴³

The Charter is currently undergoing a review by the Commissioner to assess its effectiveness in meeting the needs of victims of crime.¹⁴⁴

This review will consider the Charter's purpose, scope, application, and impact on victims' experiences.¹⁴⁵

The Victims' Commissioner will provide a final report to the Minister for Youth Justice and Victim Support by December 2026.¹⁴⁶

Victim Assist

Victim Assist provides financial assistance to victims of violent crime in Queensland.¹⁴⁷ Applications for financial assistance through Victim Assist may be made by the primary victim of a violent crime and by:

- a close family member or financial dependant of a person who was killed by an act of violence;
- a parent of a child victim; or
- a person who saw or heard an act of violence being committed against someone else.¹⁴⁸

The amount that can be paid, and the types of things Victim Assist will pay for, will depend on the type of victim the applicant is, the crime committed against the applicant, and the injuries suffered.¹⁴⁹

¹⁴² Office of the Victims' Commissioner, *Know your rights*, <<https://www.victimscommissioner.qld.gov.au/support/know-your-rights>>, accessed 16 January 2026.

¹⁴³ *Victims' Commissioner and Sexual Violence Review Board Act 2024 (Qld)*, s 9.

¹⁴⁴ Queensland Government, *Review of the Charter of Victims' Rights*, <<https://www.victimscommissioner.qld.gov.au/our-work/review-of-the-charter-of-victims-rights>>, accessed 16 January 2026.

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*

¹⁴⁷ Queensland Government, *Victim Assist Queensland, Financial support after a violent crime*, <<https://www.qld.gov.au/law/crime-and-police/victim-assist-queensland>>, accessed 16 January 2026.

¹⁴⁸ Queensland Government, *Who can apply, About financial assistance for victims*, <https://www.qld.gov.au/law/crime-and-police/victims-and-witnesses-of-crime/financial-assistance/understanding#Who_can_apply>, updated 23 September 2025.

¹⁴⁹ Queensland Government, *How Much Money, About financial assistance for victims*, <https://www.qld.gov.au/law/crime-and-police/victims-and-witnesses-of-crime/financial-assistance/understanding#Getting_the_money>, updated 23 September 2025.



Victims Advocate Service

The Queensland Government is currently establishing a Victims Advocate Service to provide targeted support pathways and resources to guide victims of crime from the start to the end of the justice process.¹⁵⁰ It will also connect victims of crime to existing support services.

The service is being designed with input from victims, victim support groups, and stakeholders and is scheduled to commence in 2026.¹⁵¹

Victims of Crime Community Response program

The Victims of Crime Community Response program, facilitated by the Queensland Government, provides support with immediate needs for people who are impacted by serious violent crime.¹⁵²

The program operates 24 hours a day, 7 days a week, and can assist victims with problem-solving, emotional support, basic needs such as food, transport, accommodation and clothing, and can also facilitate access to long-term support services and help with access to financial assistance.¹⁵³

Victim Services Funding Program

This program funds community organisations to enable victims to access trauma-informed support services, which include the provision of 24/7 phone assistance, court support and psychological first aid and counselling.

Other more specialised services for victims are also funded through this program and are noted throughout this paper.

¹⁵⁰ Department of Youth Justice and Victim Support, *Victims Advocate Service*, <<https://www.youthjustice.qld.gov.au/victim-support/victims-advocate-service>>, accessed 20 February 2026.

¹⁵¹ Ibid.

¹⁵² Queensland Government, *Victims of Crime Community Response program*, <<https://www.qld.gov.au/law/crime-and-police/victims-and-witnesses-of-crime/victims-of-crime-community-response>>, accessed 20 February 2026.

¹⁵³ Ibid.



Appendix 1 - Key legislation regarding victims and witnesses

Laws regarding evidence given by people with disability

Evidence Act 1977

Competence

The *Evidence Act* is the primary legislation that consolidates and governs the laws of evidence in Queensland, including how certain witnesses can be provided with accommodations or protections in particular matters.

The legislation presumes that every person is competent to give evidence,¹⁵⁴ however a party to a proceeding or the court itself can raise issues as to whether a person is competent to give evidence.¹⁵⁵ The court must then determine if the witness is competent to give sworn evidence (to swear to tell the truth), by determining whether the person understands that the giving of evidence is serious, and that the witness has an obligation to tell the truth 'over and above the ordinary duty to tell the truth'.¹⁵⁶

If the person is not competent to give sworn evidence, then the court must explain to the person the importance of telling the truth,¹⁵⁷ and then determine if the person can give an intelligible account of what they have observed or experienced,¹⁵⁸ allowing the witness to give unsworn evidence.¹⁵⁹

Expert evidence can be admitted to determine whether the person has the capacity to give sworn evidence or reliable evidence.¹⁶⁰

Evidence

Aside from the issue of 'competence', the *Evidence Act* makes provisions for people with disability, but the definitions that apply to such witnesses vary, with terminology referring to certain 'impairments', 'disadvantage', disabilities, and to persons 'with an impairment of the mind'.

A 'person with an impairment of the mind' is defined as in the *Criminal Code*, as:

- a person with a disability that—
 - (a) is attributable to an intellectual, psychiatric, cognitive or neurological impairment or a combination of these; and
 - (b) results in—
 - (i) a substantial reduction of the person's capacity for communication, social interaction or learning; and
 - (ii) the person needing support.¹⁶¹

¹⁵⁴ *Evidence Act 1977* (Qld) s 9.

¹⁵⁵ *Evidence Act 1977* (Qld) ss 9A(1), 9B(1).

¹⁵⁶ *Evidence Act 1977* (Qld) s 9B(2).

¹⁵⁷ *Evidence Act 1977* (Qld) s 9B(3).

¹⁵⁸ *Evidence Act 1977* (Qld) s 9A(2).

¹⁵⁹ *R v BBR* [2010] 1 Qd R 546 [46], [51] and [54].

¹⁶⁰ *Evidence Act 1977* (Qld) s 9C.

¹⁶¹ *Evidence Act 1977* (Qld) sch 3.



For a person with an impairment of the mind, any statement contained in a 'document' (which can be any form of recorded information including video and audio recordings)¹⁶² can be used as that person's evidence during the proceeding instead of that person having to give that same evidence orally in court.¹⁶³ However, the person must be available to give evidence during the proceedings, and can be cross-examined by the other party.¹⁶⁴

Once in court, certain witnesses can be declared to be a 'special witness', which allows the court to make arrangements in order to better accommodate that witness.¹⁶⁵ A person can be declared a special witness if the court believes that the person would be disadvantaged as a witness following normal processes due to 'a mental, intellectual or physical impairment'.¹⁶⁶

The court or one of the parties to the proceeding can then seek to make special arrangements when that witness is giving evidence, such as:

- excluding the defendant from the court;
- obscuring the defendant from the witness's view in court;
- excluding certain people from the court;
- allowing the witness to be in another room;
- allowing a support person to be with the witness;
- video recording the evidence of the witness prior to the proceedings; and
- any other accommodations that the court considers appropriate, such as rest breaks, ensuring the questions are kept simple, limiting the amount of time the witness is questioned, and directing the number of questions to be limited.¹⁶⁷

Queensland has also introduced an 'intermediary' scheme, which is currently limited to proceedings involving sexual offending against children.¹⁶⁸ For certain witnesses in such proceedings, such as children or a 'person with an impairment of the mind', the court can appoint an intermediary at the court's own initiative or by application of one of the parties.¹⁶⁹

The functions of an intermediary are to communicate or explain the questions being asked to enable the witness to better understand the question, and/or to communicate or explain, to the person asking questions, the answers given by the witness so that the person understands the answers.¹⁷⁰

An intermediary comes from the intermediaries panel. All people on this panel must have a relevant qualification, such as occupational therapy, psychology, social work or speech pathology, and meet the requirements for professional registration, licensing or authorisation, as needed by law.¹⁷¹

A 'person with an impairment of the mind' is also considered a 'protected witness'.¹⁷² In all domestic violence offences, and other offences where the proceedings are not in the Magistrates Court,¹⁷³ a protected witness cannot be cross-examined by the defendant directly.¹⁷⁴

Cross-examination can only be undertaken by the defendant's lawyer or, if the defendant does not have a lawyer, the court will provide a lawyer for the cross-examination of the protected witness.¹⁷⁵

¹⁶² *Evidence Act 1977* (Qld) sch 3.

¹⁶³ *Evidence Act 1977* (Qld) s 93A(1).

¹⁶⁴ *Evidence Act 1977* (Qld) s 93A.

¹⁶⁵ *Evidence Act 1977* (Qld) s 21A.

¹⁶⁶ *Evidence Act 1977* (Qld) s 21(1)(b).

¹⁶⁷ *Evidence Act 1977* (Qld) s 21A(2).

¹⁶⁸ *Evidence Act 1977* (Qld) s 21AZJ.

¹⁶⁹ *Evidence Act 1977* (Qld) s 21AZL(2).

¹⁷⁰ *Evidence Act 1977* (Qld) s 21AZM.

¹⁷¹ *Evidence Act 1977* (Qld) s 21AZV.

¹⁷² *Evidence Act 1977* (Qld) s 21M.

¹⁷³ *Evidence Act 1977* (Qld) s 21L.

¹⁷⁴ *Evidence Act 1977* (Qld) s 21N.

¹⁷⁵ *Evidence Act 1977* (Qld) s 21O.



The *Evidence Act* also provides for certain protections against 'improper questions'.¹⁷⁶ The court must disallow a question put to a witness in cross-examination or inform the witness the question does not need to be answered if it is an improper question.¹⁷⁷

An improper question includes a question that:

- (a) is misleading or confusing; or
- (b) is unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive; or
- (c) is put to the witness in a manner or tone that is belittling, insulting or otherwise inappropriate; or
- (d) has no basis other than a stereotype (for example, a stereotype based on the witness's age, race, culture, gender, sex, sex characteristics, sexuality or mental, intellectual or physical disability).¹⁷⁸

In deciding if a question is an improper question, the court considers several factors, including 'any mental, intellectual or physical disability to which the witness is, or appears to be, subject and of which the court is, or is made, aware'.¹⁷⁹

Other laws regarding victims

Penalties and Sentences Act 1992

Victim impact statements

The *Penalties and Sentences Act 1992*, which includes the general powers of the courts to sentence offenders,¹⁸⁰ has within its sentencing guidelines the recognition of the harm caused to victims of offending,¹⁸¹ as well as the nature of the offence and how serious the offence was to the victim, taking into consideration the information provided to the court through a victim impact statement.¹⁸²

A victim impact statement is a written statement that states the particulars of the harm caused to a victim by the offence.¹⁸³ Victims who can provide a victim impact statement are generally victims who have suffered personal harm, or are a family member or dependant of a person who suffered personal harm,¹⁸⁴ due to an offence against the person or a domestic violence offence.¹⁸⁵

A victim impact statement is used to inform the court of the impact of the crime on the victim during the sentencing of the offender.¹⁸⁶ The prosecutor for the offence is given the victim impact statement so the prosecutor can inform the sentencing court of the impact to the victim.¹⁸⁷ The prosecutor has the discretion to choose whether to pass on all or some of the details being provided, having regard to various factors such as the interests of justice, or causing unreasonable delays.¹⁸⁸

A victim impact statement can be prepared by the victim or another person if the victim cannot give the statement due to their age or impaired capacity.¹⁸⁹ The victim impact statement can be presented orally or in writing by the prosecutor or the person who prepared the statement.¹⁹⁰ The

¹⁷⁶ *Evidence Act 1977* (Qld) s 20A.

¹⁷⁷ *Evidence Act 1977* (Qld) s 20A(1).

¹⁷⁸ *Evidence Act 1977* (Qld) s 20A(2).

¹⁷⁹ *Evidence Act 1977* (Qld) s 20A(3).

¹⁸⁰ *Penalties and Sentences Act 1992* (Qld) s 3.

¹⁸¹ *Penalties and Sentences Act 1992* (Qld) s 9(1)(ca).

¹⁸² *Penalties and Sentences Act 1992* (Qld) s 9(2)(c)(i).

¹⁸³ *Penalties and Sentences Act 1992* (Qld) s 179I.

¹⁸⁴ *Penalties and Sentences Act 1992* (Qld) s 179I, *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) s 38.

¹⁸⁵ *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) s 39.

¹⁸⁶ *Penalties and Sentences Act 1992* (Qld) s 179K.

¹⁸⁷ *Penalties and Sentences Act 1992* (Qld) s 179K(1).

¹⁸⁸ *Penalties and Sentences Act 1992* (Qld) s 179K(2).

¹⁸⁹ *Penalties and Sentences Act 1992* (Qld) s 179L(1).

¹⁹⁰ *Penalties and Sentences Act 1992* (Qld) s 179M.



purpose of the victim reading aloud their victim impact statement is to provide a therapeutic benefit.¹⁹¹

The lack of a victim impact statement cannot be considered as the offending having caused no harm to the victim,¹⁹² and it is not mandatory for a victim to prepare a victim impact statement.¹⁹³

If a person is to read aloud their victim impact statement, the court may direct that certain arrangements be made if appropriate, including:¹⁹⁴

- the defendant be obscured from the reader of the victim impact statement;
- certain persons be excluded from the court;
- a support person be present for the reader; or
- a videolink be provided so the reader can be outside the courtroom when reading the victim impact statement.

Victims' Commissioner and Sexual Violence Review Board Act 2024

The *Victims' Commissioner and Sexual Violence Review Board Act 2024* establishes the Victims' Commissioner to promote and protect victims' rights, confirms the charter of rights for victims, and establishes the Sexual Violence Review Board to identify and review systemic issues in relation to sexual offences.¹⁹⁵

The primary functions of the Victims' Commissioner include:

- identifying and reviewing systemic issues relevant to victims;
- conducting research into matters affecting victims;
- addressing complaints regarding contraventions of the victims' charter;
- publishing information about the criminal justice system;
- promoting the victims' charter and the rights of victims, advocating for victims by making recommendations and providing advice, training and information to various entities; and
- providing advice to the government on issues regarding victims and promoting victims' rights.¹⁹⁶

The Victims' Commissioner is independent of government, and when performing their functions, the Commissioner is required to have regard to various vulnerabilities of victims, such as their disability.¹⁹⁷

As noted above, one of the functions of the Victims' Commissioner is to address complaints that there has been conduct inconsistent with the victims' charter.¹⁹⁸

Such complaints can be made by 'affected victims', defined as victims who have suffered personal harm or a family member or dependant of a person who has suffered personal harm,¹⁹⁹ due to an offence against the person or a domestic violence offence.²⁰⁰

Such victims can make a complaint to the government, a non-government agency or the Victims' Commissioner regarding an alleged breach of their rights under the charter.²⁰¹

¹⁹¹ *Penalties and Sentences Act 1992* (Qld) s 179M(4).

¹⁹² *Penalties and Sentences Act 1992* (Qld) s 179K(5).

¹⁹³ *Penalties and Sentences Act 1992* (Qld) s 179K(6).

¹⁹⁴ *Penalties and Sentences Act 1992* (Qld) s 179N(2).

¹⁹⁵ *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) s 3.

¹⁹⁶ *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) s 9.

¹⁹⁷ *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) s 11.

¹⁹⁸ *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) s 45.

¹⁹⁹ *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) s 38.

²⁰⁰ *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) s 39.

²⁰¹ *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) s 45.



The Victims' Commissioner can assist the person with their complaint,²⁰² enquire into the issues, and take steps to resolve the complaint, and can make recommendations relating to how the agency or organisation should liaise with victims of crime.²⁰³

If the complaint cannot be resolved, the Commissioner can prepare a report about the actions that should be taken to ensure that the agency or organisation complies with the victims' charter in the future.²⁰⁴

The Charter of Victims' Rights is inclusive of various rights for affected victims, including how they should be treated when communicating with any government or non-government entities.²⁰⁵

The victim has 'general rights', which include:

- 1 An affected victim will be treated with courtesy, compassion, respect and dignity, taking into account the victim's needs.
- 2 The personal information of an affected victim, including the victim's address and telephone number, will not be disclosed unless authorised by law.
- 3 An affected victim will be informed at the earliest practicable opportunity about services and remedies available to the victim.²⁰⁶

The victim also has the right to be kept informed regarding the criminal justice process, which includes the provision of information regarding the following:

- the progress of the investigation;
- every major decision made, and the reasons for the decision, about the prosecution of the accused;
- details of the accused person, such as their name, relevant court processes, diversionary programs made available and the outcome of criminal proceedings;
- outcomes of bail applications and any conditions imposed;
- the trial process and being a witness; and
- making victim impact statements.²⁰⁷

The victim also has the right to be protected from unnecessary contact, violence or intimidation by the accused or their associates during a court proceeding, and the property of a victim held by authorities is to be returned as soon as possible.²⁰⁸

The charter also includes the rights of 'eligible persons' (discussed in further detail below) under the *Corrective Services Act 2006* and the *Youth Justice Act 1992* to be informed about a prisoner's status, and their opportunity to make written submissions to the parole board.²⁰⁹

²⁰² *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) s 47.

²⁰³ *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) s 52.

²⁰⁴ *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) s 54.

²⁰⁵ *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) s 42.

²⁰⁶ *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) s sch 1 pt 1 div 1.

²⁰⁷ *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) s sch 1 pt 1 div 2.

²⁰⁸ *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) s sch 1 pt 1 div 2.

²⁰⁹ *Victims' Commissioner and Sexual Violence Review Board Act 2024* (Qld) s sch 1 pt 2.



Corrective Services Act 2006

As noted above, the *Corrective Services Act 2006* includes provisions regarding 'eligible persons' who are entitled to receive certain information regarding prisoners.

Prisoners who have been sentenced to imprisonment for a violent or sexual offence, and certain prisoners under the *Dangerous Prisoners (Sexual Offenders) Act 2003*, can be subject to the 'eligible persons register'.²¹⁰

An eligible person can include:

- a person against whom the prisoner committed the offence;²¹¹
- an immediate family member of a deceased victim of the offence;²¹²
- a person whose safety could be in danger due to there being a history of violence by the prisoner against the person, or the person's connection with the prisoner's offending;²¹³
- a person who has a domestic violence order in force against the prisoner, or who is at risk of domestic violence from the prisoner;²¹⁴
- for certain homicide offences, where an immediate family member of the victim, due to the impact of the offence on the person, or if that person may be in danger.²¹⁵

The Queensland Government website includes information regarding eligible persons at <https://www.qld.gov.au/law/your-rights/victim-rights-and-complaints/victims-registers/adult>.

If the eligible person is a person with impaired capacity (as defined in the *Guardianship and Administration Act 2000*),²¹⁶ their guardian or an attorney under an enduring power of attorney is the eligible person, and the guardian or attorney can be registered instead of, or as well as, the person with impaired capacity.²¹⁷

An eligible person is provided with the following information about the prisoner:

- (a) the prisoner's eligibility dates for discharge or release;
- (b) the prisoner's date of discharge or release;
- (c) the death of the prisoner and, if the prisoner died while detained in a corrective services facility, the date of death;
- (d) the escape of the prisoner and the date of that escape;
- (e) details of a change of name of the prisoner registered under a law of the State about births, deaths and marriages;
- (f) the fact, and date, of any particular circumstances relating to the prisoner that could reasonably be expected to endanger the eligible person's life or physical safety;
- (g) for a no body-no parole prisoner—whether a no cooperation declaration is in force for the prisoner.²¹⁸

Corrective Services may also provide additional information to the eligible person if it is thought appropriate, including the location of the prisoner, the length of term of imprisonment, and any details of other orders that the prisoner may have.²¹⁹

²¹⁰ *Corrective Services Act 2006* (Qld) s 321(1).

²¹¹ *Corrective Services Act 2006* (Qld) s 321(2)(a).

²¹² *Corrective Services Act 2006* (Qld) s 321(2)(a).

²¹³ *Corrective Services Act 2006* (Qld) s 321(2)(b).

²¹⁴ *Corrective Services Act 2006* (Qld) s 322.

²¹⁵ *Corrective Services Act 2006* (Qld) s 323.

²¹⁶ *Corrective Services Act 2006* (Qld) sch 4.

²¹⁷ *Corrective Services Act 2006* (Qld) s 323A.

²¹⁸ *Corrective Services Act 2006* (Qld) s 324A.

²¹⁹ *Corrective Services Act 2006* (Qld) s 325.



Youth Justice Act 1992

If an offender was sentenced under the *Youth Justice Act 1992* (generally if they were sentenced as a child), a separate 'eligible persons register' for victims is found under this legislation.

Similar to the register under the *Corrective Services Act*, a child in detention (a detainee) under the *Youth Justice Act* for a violent or sexual offence can be subject to an 'eligible persons register'.²²⁰

A person can be registered to receive information about a detainee if they are the victim of the offence or an immediate family member of the deceased victim.²²¹ A parent of a victim or an adult with a guardian or attorney appointed under an enduring power of attorney can also apply to be an eligible person.²²² Another person whose life or physical safety is endangered due to the detainee's history of violence to the person or a connection between the person and the offence can also apply to be an eligible person.²²³

An eligible person can be provided with the following information about a child:

- the transfer of the child to another jurisdiction or to another corrective services facility;
- the length of detention;
- when the child is eligible or due for discharge or release;
- granting of leave of absence for the child;
- if the child is unlawfully at large; or
- the death of the child.²²⁴

Mental Health Act 2016

The *Mental Health Act 2016* includes provisions related to victims of offences when accused persons are diverted out of the criminal justice system and into the forensic mental health system.

The *Mental Health Act* contains its own definition of 'victim', which includes the victim of an unlawful act, the close relative of such a victim, or another individual who has suffered harm due to the unlawful act committed against a victim.²²⁵

A set of guiding principles are set out in the *Mental Health Act* in relation to victims:

- (a) the physical, psychological and emotional harm caused to the victim by the unlawful act must be recognised with compassion;
- (b) the benefits of counselling, advice on the nature of proceedings under this Act and other support services to the recovery of the victim from the harm caused by the unlawful act must be recognised;
- (c) the benefits to the victim of being advised in a timely way of proceedings under this Act against a person in relation to the unlawful act must be recognised;
- (d) the benefits to the victim of the timely completion of proceedings against a person in relation to the unlawful act must be recognised;
- (e) the benefits to the victim of being advised in a timely way of a decision to allow a person to be treated in the community must be recognised;
- (f) the benefits to the victim of being given the opportunity to express the victim's views on the impact of the unlawful act to decision-making entities under this Act must be recognised.²²⁶

The *Mental Health Act* also includes provisions relating to informing victims regarding the progress of an accused person through the forensic mental health system, as well as the ability for victims to provide victim impact statements.

²²⁰ *Youth Justice Act 1992* (Qld) s 282A(1).

²²¹ *Youth Justice Act 1992* (Qld) s 282(2).

²²² *Youth Justice Act 1992* (Qld) s 282BA(1).

²²³ *Youth Justice Act 1992* (Qld) s 282BA(1)(c).

²²⁴ *Youth Justice Act 1992* (Qld) s 282F.

²²⁵ *Mental Health Act 2016* (Qld) s 6(1).

²²⁶ *Mental Health Act 2016* (Qld) s 6(2).



If an application is made to the Chief Psychiatrist, a victim can also receive 'information notices' that provide information about an accused person.²²⁷

The application to the Chief Psychiatrist must be submitted on an approved form, state whether the applicant or another person (the applicant's nominee) will receive the information, and be accompanied by a statutory declaration by the applicant or their nominee that they will not publish the information received.²²⁸

If the application is approved by the Chief Psychiatrist, the victim can receive the following information regarding the accused person:

- information about reviews of forensic orders, treatment support orders, or fitness for trial;
- information about transfers of the patient out of Queensland;
- information about decisions made by the Mental Health Review Tribunal;
- information about appeals in the Mental Health Court;
- information regarding the patient's absence from an authorised mental health service; and
- other information such as the name of the authorised mental health service responsible for the patient, transfers to another authorised mental health service or the forensic disability service, and other decisions regarding transfers or revocations of orders.²²⁹

Information regarding any specific treatment or care being provided to the accused person, or the address where the person lives, is not disclosed to a victim.²³⁰

If the Mental Health Court finds a person was of unsound mind or unfit for trial, a victim or a close relative of the victim can provide a victim impact statement to the Mental Health Court.

The victim impact statement can include views about the risk of the person to the victim or a close relative and a request that the person not contact the victim, close relative, or any other person.²³¹

The Mental Health Court 'may place the weight on the victim impact statement it considers appropriate' when making its order.²³²

When the Mental Health Review Tribunal is reviewing a forensic order or treatment support order, it must also consider victim impact statements.²³³ The tribunal also places weight on the victim impact statement that 'it considers appropriate'.²³⁴ Victim impact statements to the tribunal can also include a request by the victim or close relative for the person to not contact the victim, close relative, or any other person.²³⁵ A victim impact statement can be presented to the tribunal, even if one was not presented in the Mental Health Court.²³⁶

Domestic violence legislation

Domestic and Family Violence Protection Act 2012

The *Domestic and Family Violence Protection Act 2012* provides protection for a person against domestic and family violence where a 'relevant relationship' exists between persons.²³⁷

Domestic violence can include behaviour or a pattern of behaviour that is:

²²⁷ *Mental Health Act 2016* (Qld) s 27.

²²⁸ *Mental Health Act 2016* (Qld) s 318(2).

²²⁹ *Mental Health Act 2016* (Qld) s 320, sch 1

²³⁰ *Mental Health Act 2016* (Qld) s 320(4).

²³¹ *Mental Health Act 2016* (Qld) s 162(2).

²³² *Mental Health Act 2016* (Qld) s 165(2).

²³³ *Mental Health Act 2016* (Qld) s 432(1), 464(1).

²³⁴ *Mental Health Act 2016* (Qld) s 530(2).

²³⁵ *Mental Health Act 2016* (Qld) s 742(2).

²³⁶ *Mental Health Act 2016* (Qld) s 742(3)

²³⁷ *Domestic and Family Violence Protection Act 2012* (Qld) s 8.



- physically or sexually abusive;
- emotionally or psychologically abusive;
- economically abusive;
- threatening;
- coercive; or
- in any other way controlling or dominating of the second person and causes that person fear for their or another's safety or wellbeing.²³⁸

Behaviour, or a pattern of behaviour, can occur over a period of time, may involve more than one act that when considered together is abusive, threatening or coercive or causes fear, and is to be considered in the context of the relationship.²³⁹

A 'relevant relationship' must be:²⁴⁰

- An 'intimate personal relationship' which is:²⁴¹
 - a 'spousal relationship', which exists between
 - Spouses;
 - De facto partners;
 - A former spouse; or
 - A parent, or former parent, of a child of the person.
 - An 'engagement relationship', where two persons are or were engaged to be married to each other;²⁴² or
 - A 'couple relationship', where two persons have or had a relationship as a couple.²⁴³
- A 'family relationship', where two persons are or were a relative of the other.²⁴⁴ A 'relative' can be someone who is 'ordinarily understood to be or to have been connected to the person by blood or marriage',²⁴⁵ or someone either person regarded themselves as a relative;²⁴⁶ or
- An 'informal care relationship' which exists where a person is dependent on another person (as a carer) who provides assistance in an 'activity of daily living' such as dressing, grooming, preparing meals and shopping.²⁴⁷ However, an informal care relationship does not exist between a child and a parent, or if the care is provided under a commercial arrangement.²⁴⁸

There is some acknowledgement of disability in the legislation, and how it may cause certain vulnerabilities. In administering the legislation, a principle that must be followed is that people have characteristics that may make them particularly vulnerable to domestic violence, and responses should consider such characteristics, which include a person's disability.²⁴⁹

When considering who in a relationship needs protection and deciding who a domestic violence order is made against, disability must be taken into account as a characteristic that would make a person most in need of protection.²⁵⁰

When a domestic violence order is made, the court is to ensure that both parties understand the order.²⁵¹ This can include the court using services to assist in this process, including disability case workers to explain the order to a person with disability.²⁵²

²³⁸ *Domestic and Family Violence Protection Act 2012* (Qld) s 8(1).

²³⁹ *Domestic and Family Violence Protection Act 2012* (Qld) s 8(2).

²⁴⁰ *Domestic and Family Violence Protection Act 2012* (Qld) s 13.

²⁴¹ *Domestic and Family Violence Protection Act 2012* (Qld) s 14.

²⁴² *Domestic and Family Violence Protection Act 2012* (Qld) s 17.

²⁴³ *Domestic and Family Violence Protection Act 2012* (Qld) s 18.

²⁴⁴ *Domestic and Family Violence Protection Act 2012* (Qld) s 19(1).

²⁴⁵ *Domestic and Family Violence Protection Act 2012* (Qld) s 19(2).

²⁴⁶ *Domestic and Family Violence Protection Act 2012* (Qld) s 19(4).

²⁴⁷ *Domestic and Family Violence Protection Act 2012* (Qld) s 20.

²⁴⁸ *Domestic and Family Violence Protection Act 2012* (Qld) s 20.

²⁴⁹ *Domestic and Family Violence Protection Act 2012* (Qld) s 4(2).

²⁵⁰ *Domestic and Family Violence Protection Act 2012* (Qld) s 22A(2).

²⁵¹ *Domestic and Family Violence Protection Act 2012* (Qld) s 84(1).

²⁵² *Domestic and Family Violence Protection Act 2012* (Qld) s 84(4).

