

## Queensland Community Safety Bill 2024

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16 May 2024

**Moderator**  
**Rev Bruce Moore**

Committee Secretary  
Community Safety and Legal Affairs Committee  
Parliament House  
George Street  
Brisbane Qld 4000

Dear Committee Secretary,

### **Queensland Community Safety Bill 2024**

The Uniting Church in Australia Queensland Synod (Queensland Synod) welcomes the opportunity to provide a submission to the Community Safety and Legal Affairs Committee on the Queensland Community Safety Bill 2024. The Queensland Synod is a member of both the national #RaiseTheAge alliance and the Queensland Raise the Age Leadership Group. We are also committed to contributing to services and programs aimed at prevention and early intervention for children and young people and their families, who are experiencing vulnerability and disadvantage.

We support addressing problematic behaviour by children through early intervention, assistance and prevention, therapeutic responses to antisocial behaviour, and intensive case management for serious problematic behaviour. We acknowledge the importance of advancing an integrated, whole-of-community approach to youth justice policy development. Please find attached our submission and our Youth Justice Statement.

The Queensland Synod would welcome future opportunities to discuss this submission further. Should you require any more information, I can be contacted on 07 3377 9705.

Yours sincerely,



Rev. Bruce Moore  
Moderator, Uniting Church in Australia Queensland Synod

## Introduction

The Queensland Synod has prepared this submission to focus on the findings of, and in support of relevant recommendations relating to youth justice made by the recent final report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Royal Commission)<sup>1</sup>. Other recommendations are also made. The relevant recommendations address the following issues:

- The Youth Justice Principle of detention as a last resort .
- Screening and assessment for disability of young offenders, and the need for national practice guidelines for screening for disability and identification of support needs in custody.
- Support for and cultural safety of First Nations children and young people with disability in custody.
- Prohibiting solitary confinement (isolation) in youth detention.
- The need for disability training for staff in youth detention.
- The need to raise the minimum age of criminal responsibility to 14.
- The split of responsibility between the commonwealth and states/territories concerning the provisions of supports in the justice system.
- Diversion of children and young people with cognitive disability from criminal proceedings
- The inappropriate use of watch houses to detain children and young people, and
- Preventing the inappropriate use of exclusionary discipline against students with disability.

We endorse the following recommendations in the submission to be included in the Queensland Community Safety Bill 2024. We appreciate that the Queensland government is still considering its response to the Royal Commission, however the recommendations should be implemented immediately, to uphold the human rights of children and young people who have contact with the criminal justice system, particularly those that are overrepresented in the criminal justice system, First Nations children and young people with disability.

We commend the Queensland government for relevant commitments outlined in its response to the Youth Justice Reform Select Committee's Interim Report, and urge the Queensland government to prioritise these commitments, such as:

- an additional \$7.1 million to expand physical and mental health and cognitive disability screening in Youth Detention Centres,
- inserting a reference to disability services into the youth justice principles to highlight that a child's disability needs must be met while they are in detention,
- further work investigating referrals for Fetal Alcohol Spectrum Disorder (FASD),
- further service planning for priority areas for youth Alcohol and Other Drugs (AOD) rehabilitation programs,
- further work investigating better partnerships between the Queensland government and Aboriginal Community Controlled Organisations for youth justice,

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<sup>1</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). Final report.

- evaluation of the co-cautioning trial between police and First Nations elders,
- considering the establishment of a youth Murri court,
- an additional \$6 million to expand after hours services in communities experiencing increases in youth offending,
- a workforce planner looking at how to keep Youth Detention Centres staffed at adequate levels so lockdowns (isolation) in Youth Detention Centres are avoided
- consideration of a service model for better transitions from youth detention, and
- reviewing the operation of suspension, exclusion and absenteeism policies in Queensland schools to identify strategies to reduce the risk of school disengagement, improve support to staff, and promote safety within Queensland's schools.

### **Youth Justice Principle of detention as a last resort**

Youth detention in Queensland costs the taxpayer \$1901 per child per day<sup>2</sup>. Research from around the world suggests that bringing children into the youth justice system increases the chance that they will reoffend<sup>3</sup>. Queensland relies on a system of incarceration for children and adults that is harmful, expensive and ineffective<sup>4</sup>. The over-use of detention fails to keep the community safe - around eight in 10 children released from sentenced detention in Queensland return within 12 months<sup>5</sup>. Almost all children released from prison in Queensland (approximately 90%) are alleged to reoffend within 12 months of their release<sup>6</sup>. The over-use of prison fails to keep the community safe<sup>7</sup>.

The best way to reduce children's offending is to provide support to vulnerable children in the community and take preventative measures so they do not engage in offending in the first place<sup>8</sup>. The justice system is where children end up after they have experienced a breakdown in the systems and supports around them<sup>9</sup>. Early intervention and prevention should be occurring through other systems such as the education system, the child protection system, and diversionary approaches to policing and sentencing<sup>10</sup>. In addition, the research evidence has found that children are less likely to reoffend if intervention and diversion is the main response taken to address youth offending<sup>11</sup>.

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<sup>2</sup> Productivity Commission (2021). Report on Government Services: Youth Justice Services.

<sup>3</sup> Ibid.

<sup>4</sup> The Justice Reform Initiative (2023). Alternatives to incarceration in Queensland.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Walsh, T., Beilby, J., Lim, P. & Cornwell, L (2023). Safety through support: Building safer communities by supporting vulnerable children in Queensland's youth justice system.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

The vast majority of children who commit crimes will ‘age out’ of offending once they reach adulthood<sup>12</sup>.

We **recommend** that the Queensland government remove the rewording of the youth justice principle of detention as a last resort and leave the wording as it currently is. This will clarify that Queensland is upholding Australia’s obligations under the United Nations Convention on the Rights of the Child, to which Australia is a signatory.

### **Screening and assessment of children and young people with disability in youth detention**

Children with disability, particularly First Nations children with disability, are over-represented in youth detention in Australian states and territories. In Queensland, the annual *Youth Justice Census* records that, of the children in youth detention centres or police watchhouses in 2022<sup>13</sup>:

- 37 per cent had at least one of the listed disabilities
- 12 per cent had diagnosed or suspected Fetal Alcohol Spectrum Disorder (FASD)
- 26 per cent had diagnosed or suspected cognitive or intellectual disability
- 19 per cent had diagnosed or suspected Developmental/Language Disorder
- 27 per cent had at least one diagnosed or suspected mental health disorder, and
- 68 per cent of detainees were First Nations young people.

Some of the reasons children with cognitive disability are more likely to enter the criminal justice system include difficulty with memory, attention, impulse control, communication, difficulties withstanding peer pressure, controlling frustration and anger, and they may display inappropriate sexual behaviour<sup>14</sup>. Detention settings, which are characterised by strict discipline and rules, exacerbates the vulnerabilities of children with disability who often lack access to therapeutic support and trauma-informed care<sup>15</sup>.

The Royal Commission found that there is a limited systemic capacity to understand and provide for the needs of children in detention who have a diagnosed or undiagnosed disability, which limits governments’ ability to respond appropriately to the disability needs of children in detention<sup>16</sup>. Experts gave evidence to the Royal Commission that the overriding approach in youth detention to provide humane conditions in detention should be a person-centred, recovery-based, rights-respecting approach, rather than a punitive approach<sup>17</sup>.

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<sup>12</sup> Walsh, T., Beilby, J., Lim, P. & Cornwell, L (2023). Safety through support: Building safer communities by supporting vulnerable children in Queensland’s youth justice system.

<sup>13</sup> Department of Children, Youth Justice and Multicultural Affairs (2022). Youth Justice Census summary.

<sup>14</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). Final report.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

The Queensland Family and Child Commission Queensland recently outlined the elements of a child rights approach to youth justice in Queensland, which we **support**<sup>18</sup>. From a disability perspective, a rights-based approach should also focus upon the individual characteristics and support needs of the detainee, particularly around reasonable accommodations<sup>19</sup>. Disability screening should start upon admission and continue over such time as further assessments are required<sup>20</sup>. The Royal Commission found that there is a clear need for minimum standards to be adopted across Australia as a means of improving processes for screening and identifying disability in custodial settings, particularly cognitive disability.

### **Screening and assessment of First Nations children and young people with disability**

The Royal Commission also heard evidence about the inappropriateness of using standardised screening tools developed by and for western cultures on First Nations people<sup>21</sup>. Culturally appropriate and validated tools to screen for disability and mental illness are necessary to ensure First Nations children and young people with disability receive the supports they require while in custody and to plan for the supports required upon release from custody, such as the Westerman Aboriginal Symptom Checklist – Youth (WASC-Y) and the Guddi Way Screen developed by Synapse<sup>22</sup>.

### **Culturally appropriate supports for First Nations children and young people**

The importance of culturally appropriate supports for First Nations children with disability who come into contact with the youth justice system was also highlighted by the Royal Commission<sup>23</sup>.

Improving the capacity of the Aboriginal community-controlled sector to support children and young people accused or suspected of offending would facilitate the diversion of First Nations children and young people away from the criminal justice system and into their community<sup>24</sup>. The Royal Commission found that there needs to be a systematic approach across Australian states and territories, through sustainable funding models, to enable First Nations organisations such as Aboriginal Community Controlled Health Organisations to enter youth detention centres to gain the trust of and support First Nations children and young people with disability, particularly in screening practices for First Nations children and young people with disability who enter custody<sup>25</sup>.

We **support the recommendations** below from the Royal Commission<sup>26</sup>:

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<sup>18</sup> Queensland Family and Child Commission Queensland (2023). Child rights report: Spotlight youth justice in Queensland.

<sup>19</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). Final report.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

**Recommendation 8.4 Screening and assessment for disability in youth detention**

State and territory governments should ensure timely screening and expert assessment are available for individual children with cognitive disability involved in the criminal justice system (including, but not limited to, detention settings) and that they receive appropriate responses, including therapeutic and other interventions.

**Recommendation 8.14 National practice guidelines for screening in custody**

State and territory corrective services, youth justice agencies and justice health agencies, through the Corrective Services Administration Council and equivalent youth justice bodies, should develop national practice guidelines and policies relating to screening for disability and identification of support needs in custody. People with disability, including with lived experience of the criminal justice system, and people with expertise in cognitive disability should be involved in the design of the guidelines and contribute to the approaches to implementation. The guidelines and policies should:

- explain the essential elements of screening and assessment for people with disability, including a trauma-informed approach to identifying disability and the person's needs
- reduce reliance upon self-disclosure as the primary means of disability identification following admission of a person with disability to custody
- require screening upon reception into custody or shortly thereafter both for prisoners and detainees who have been sentenced and for those on remand
- promote the consistent collection of data and its use to inform system-wide responses
- encourage the development and use of culturally safe disability screening tools that address the particular needs of First Nations people with disability
- encourage the development and use of disability screening tools that are culturally appropriate for people with disability from culturally and linguistically diverse communities
- encourage investment in initial and ongoing training, education and support of staff about disability identification and awareness
- encourage collaborative practices including the engagement of clinicians to conduct assessments to identify the support needs of a person with disability in custody
- require the identification of a disability or impairment to be matched with appropriate support while in custody
- promote the use of screening outcomes to develop plans for prisoners and detainees transitioning to the community
- contribute to appropriate information sharing among agencies including court-based assessments and reports.

**Recommendation 8.15 Policies and practices on screening, identifying and diagnosing disability in custody**

State and territory governments should ensure that policies and practices concerning screening, identification and diagnosis of disability in respect of people with disability in custody are consistent with the national practice guidelines.

**Recommendation 8.16 Support by First Nations organisations to people in custody**

State and territory corrective service and youth justice agencies and justice health agencies should engage First Nations organisations, including Aboriginal Community Controlled Health Organisations, to provide culturally safe disability screening and assessment services for First Nations prisoners and detainees.

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

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

**Disability support needs**

The Royal Commission suggested that staff and officials in youth detention centres at all levels need training to enable them to respond appropriately to the behaviours and needs of children with disability, particularly training on behaviour as a means of communication<sup>27</sup>. Guidance for youth justice staff should contain content to ensure isolation is only used when necessary, is not used as punishment, and is always accompanied by other measures to address a child or young person's behaviour or risk<sup>28</sup>.

The Royal Commission also suggested that training on trauma-informed practices and cultural support for First Nations children with disability in detention should be delivered by clinicians with expertise in developmental trauma and education, and be facilitated by First Nations health professionals, organisations and community members so it is culturally safe<sup>29</sup>.

We **support the recommendation** below from the Royal Commission<sup>30</sup>:

**Recommendation 8.5 Disability training for staff in youth detention**

State and territory governments should ensure staff and officials in youth detention centres at all levels receive appropriate initial and ongoing training and support in relation to the needs and experiences of children with disability. This includes training and support on trauma-informed care and culturally appropriate and gender responsive approaches to children with disability in detention.

**Prohibiting the use of isolation/solitary confinement in youth detention**

There is evidence, and a consensus in human rights instruments, that isolation/solitary confinement can have severe, long-term and irreversible effects on a child's health and wellbeing<sup>31</sup>. The prolonged

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<sup>27</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). Final report.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.



use of isolation/solitary confinement can impact the physical and psychological health of the child, as well as their social and educational development<sup>32</sup>. Isolation/solitary confinement is used excessively in Australian states and territories as a mechanism for behavioural management of children and young people in detention and often, decisions that lead to the isolation of children are not made lawfully<sup>33</sup>. The Royal Commission found that it was unacceptable that isolation amounting to solitary confinement is often imposed on children in youth detention as a consequence of operational decisions to ‘lockdown’ a youth detention centre because of a lack of staff<sup>34</sup>. The Royal Commission highlighted that it is the duty of state and territory governments to properly staff their youth detention facilities so the rights of children deprived of their liberty are upheld: *The state’s duty of care to children in detention entails adequately staffing its detention centres to discharge that duty*<sup>35</sup>.

In Queensland, under the *Youth Justice Regulation 2016* (Qld), a detention centre employee may seclude a child in a locked room for the child’s protection or to protect another person or property, or to restore order. On 21 February 2023, the Children’s Court of Queensland sentenced a 14-year-old boy with FASD and Attention Deficit Hyperactivity Disorder (ADHD) who had spent 139 days in youth detention<sup>36</sup>. The judgment records that, over 87 of the days for which records were made available to the Court, the boy was confined to his cell for 20 or more hours each day<sup>37</sup>. For 10 of those 87 days, he was confined for 24 hours a day<sup>38</sup>. The judgment records that the child developed behavioural problems during his detention<sup>39</sup>. The court said the circumstances of his detention were ‘cruel, inappropriate and have served no rehabilitative effect’<sup>40</sup>. The court said that detaining a young person with disabilities for such a long period was completely contrary to the *Youth Justice Act 1992* (Qld) and the Charter of Youth Justice principles<sup>41</sup>. In particular, it was contrary to principles regarding detention as ‘a last resort’ and ‘for the least time that is justified’<sup>42</sup>.

The Royal Commission found that there is no evidence that solitary confinement is an appropriate response to children and young people with disability displaying behaviours of concern<sup>43</sup>. A range of experts gave evidence to the Royal Commission that solitary confinement should be banned under state and territory laws<sup>44</sup>.

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<sup>32</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). Final report.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

We **support the recommendation** below from the Royal Commission<sup>45</sup>:

### **Recommendation 8.3 Prohibiting solitary confinement in youth detention**

States and territories should:

- a. introduce legislation to prohibit solitary confinement in youth justice settings (being the enforced isolation or segregation for any purpose of a child or young person for 22 or more hours in any day)
- b. introduce legislation to prohibit the use of isolation (however described) in youth detention centres as punishment in any circumstance
- c. review legislation, policy and procedures to ensure children with disability are not subjected to isolation practices amounting to solitary confinement
- d. ensure legislation authorising isolation (including lockdowns) in youth detention centres provides for its use:
  - as a temporary response to behaviour that poses a serious and immediate risk of harm to an individual
  - as a last resort after all other measures to address risk have been exhausted
  - for a period that must not exceed a specified number of hours in any day
- e. ensure legislation authorising isolation (including lockdowns) in youth detention centres provides at a minimum the following protections for children with disability:
  - a requirement to take into account the child's disability needs before any isolation period is authorised
  - meaningful human contact during the period of isolation
  - access to the community equivalent standard of health care, including mental health services during the period of isolation
  - regular review of the order and circumstances authorising isolation
  - the creation and keeping of detailed records relevant to the period of isolation and the provision of a copy of such records to the relevant body with independent oversight of places of detention (such as the Inspector of Custodial Services).

### **Raising the minimum age of criminal responsibility**

State and territory governments owe children in youth detention a duty of care that includes protecting them against violence, abuse, neglect and exploitation<sup>46</sup>. Placing children in detention, especially children with cognitive disability, exposes them to the risk of violence, abuse and neglect, and increases the chances that they will become enmeshed in the criminal justice system<sup>47</sup>. The most effective way of preventing very young children from experiencing the trauma of detention and becoming enmeshed in the criminal justice system at an early age, is to raise the minimum age of criminal responsibility to 14 years<sup>48</sup>.

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<sup>45</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). Final report.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

The Northern Territory has passed legislation to raise the minimum age to 12 years, the Australian Capital Territory and Victoria have committed to raising the age to 14 years, while Tasmania has recently committed to raising the age from 10 to 14 years<sup>49</sup>.

The Royal Commission highlighted that raising the minimum age of criminal responsibility would require states and territories to fund and support families, communities and services to support children with disability in the community who would otherwise end up in detention<sup>50</sup>.

We **support the recommendation** below from the Royal Commission<sup>51</sup>:

**Recommendation 8.22 Age of criminal responsibility**

States and territories that have not already done so should introduce legislation to raise the minimum age of criminal responsibility to 14.

On 12 August 2022, the Standing Council of Attorneys-General (SCAG) agreed that the SCAG Working Group on the Age of Criminal Responsibility (the Working Group), would be reconvened to continue to develop a proposal on raising the minimum age of criminal responsibility, paying particular attention to the overrepresentation of Aboriginal and Torres Strait Islander children in the criminal justice system<sup>52</sup>. The report focuses on the need for adequate supports and services for children aged below a raised minimum age of criminal responsibility who exhibit negative behaviours<sup>53</sup>.

The Working Group identified a set of key concepts that should underpin all elements of reform, including the development of legislation and policy and the practical delivery of alternative service systems<sup>54</sup>:

1. The best interests of the child, based upon the needs of individual children, their families, kin and carers.
2. Community safety and the experience of victims, recognising the right of all individuals to safety in our community.
3. Aboriginal and Torres Strait Islander self-determination, with consideration of the need for resourcing of Aboriginal Community Controlled Organisations to deliver service responses and build community capacity, and representation in governance mechanisms.
4. A holistic, trauma-informed, therapeutic approach, incorporating comprehensive assessment, case management and therapeutic responses that respond to the complex needs of children,

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<sup>49</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). Final report.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Standing Council of Attorneys-General (2023). Age of Criminal Responsibility Working Group Report.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

providing multidisciplinary support as early as possible, and incorporating kin-, family- and child-centred practice.

5. Responsiveness to diversity and inclusion, having regard to the diverse, complex and intersecting needs of children and their families, through appropriately skilled workforces which engender cultural safety, strengths-based practice and person-centred, trauma-informed and healing-informed services and care, disability awareness and inclusivity.
6. Locally tailored responses, including (where appropriate) place-based responses that build upon the strengths and capacity of communities to prevent and respond to the drivers of offending. Particular regard is to be had to the characteristics and availability of services in regional, rural and remote areas, and the need for resourcing to deliver service responses.
7. Evidence based and data driven policy, with design, delivery and decision-making informed by data and a robust evidence base, and consideration of the right of Aboriginal and Torres Strait Islander communities to access and interpret information about their communities.

The report provides a pathway for reforming the minimum age of criminal responsibility in Australian jurisdictions, by outlining considerations in developing the alternative service system response needed and detailing a principles-based framework applicable to all Australian jurisdictions, for children who engage in negative behaviour but are no longer captured by the criminal justice system<sup>55</sup>.

In recognition of the experiences of systemic racism and discrimination that Aboriginal and Torres Strait Islander peoples have faced in the justice system, the Working Group report suggested that governance and review mechanisms of any new systems should consider and reflect the lived experience of children and young people, people with disability and Aboriginal and Torres Strait Islander peoples<sup>56</sup>.

We **support** the proposals contained in the Working Group's (2023) report above and **recommend** that they be implemented in Queensland.

### **The National Disability Insurance Scheme (NDIS) and criminal justice interface**

The criminal justice system lacks a clear delineation of responsibilities for people with disability between the NDIS and states and territories<sup>57</sup>. The Department of Child Safety, Seniors, and Disability Services (DCSSDS ) provided a brief for the recent Youth Justice Reform Select Committee Inquiry which reports that following the roll-out of the NDIS, the DCSSDS no longer provides direct, specialist disability supports, including for young people and children with disability in youth justice or at risk of a youth justice trajectory<sup>58</sup>.

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<sup>55</sup> Standing Council of Attorneys-General (2023). Age of Criminal Responsibility Working Group Report.

<sup>56</sup> Ibid.

<sup>57</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). Final report.

<sup>58</sup> Department of Child Safety, Seniors, and Disability Services (2023). Brief to the Youth Justice Reform Select Committee.

We **recommend** that the Queensland government support the following recommendations<sup>59</sup>:

**Recommendation 8.17 NDIS Applied Principles and Tables of Support concerning the justice system**

Through the Disability Reform Ministerial Council, the Australian Government and state and territory governments should:

- review the *National Disability Insurance Scheme (Supports for Participants) Rules 2013* (Cth) and the Applied Principles and Tables of Support (APTOS) and operational guidelines to align and provide clear parameters in determining which supports will be funded by the NDIS for participants involved in the criminal justice system
- resolve issues related to the interface between the NDIS and the criminal justice system, particularly the distinction between ‘criminogenic-related supports’ and ‘disability-related supports’
- where such issues cannot be resolved, agree on a mechanism for joint-funding of individual supports. Proposed amendments to the *National Disability Insurance Scheme (Supports for Participants) Rules 2013* (Cth) and the APTOS should be agreed by National Cabinet.

**Recommendation 8.18 Timing of NDIA-funded transition supports**

The National Disability Insurance Agency (NDIA) should issue guidelines to stating expressly that a release date is not a precondition for approving funding for transitional supports for participants in custody. The NDIA’s Justice Operational Guidelines and internal practice guides should be amended to make this clear.

**Diversion from the criminal justice system**

Children in youth detention usually have complex needs and are likely to have suffered multiple traumas, such as childhood abuse and neglect, socioeconomic disadvantage, family violence, and educational exclusion<sup>60</sup>.

The Queensland 2022 Youth Justice census confirms this – it identified the following key information about young people who are under supervision by the Queensland Department of Youth Justice, Employment, Small Business and Training (DYJESBT)<sup>61</sup>:

- 53% had been impacted by domestic and family violence
- 45% were disengaged from education, employment, and training
- 30% were in unstable and/or unsuitable accommodation
- 27% have one or more mental health disorders
- 27% have one or more disabilities
- 27% have a parent that had been held in adult custody, and
- 78% used one or more substances.

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<sup>59</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). Final report.

<sup>60</sup> Ibid.

<sup>61</sup> Department of Youth Justice, Employment, Small Business and Training (2023). Brief to the Youth Justice Reform Select Committee.

The DYJESBT, in its brief to the Youth Justice Reform Select Committee Inquiry, reported that there is strong evidence to suggest that these factors are driving an increase in the seriousness of some high-risk youth offending<sup>62</sup>. The DYJESBT reported that there is a relatively small cohort of young people in Queensland who are characterised by more frequent offending<sup>63</sup>. Young offenders who are designated as serious repeat offenders, in 2023 represented 20% of distinct young people with a proven offence who committed 55% of offences<sup>64</sup>.

This relatively recent trend is characterised by young offenders who have been observed to have or demonstrated multiple or chronic risks, which are often intergenerational<sup>65</sup>:

- one or more parents in or have been in custody;
- misuse of substances including more serious drugs;
- significant violence and disadvantage in the home;
- poor parenting or lack of parenting support;
- lack of stable accommodation;
- disengagement from education;
- disability and other health issues including poor mental health.

As of 30 June 2023, nearly one in three children on Queensland's serious repeat offender index is under a child protection order<sup>66</sup>. Children under the care of the State are often criminalised for behavioural issues which would not happen if they occurred in a stable family environment and that can start a path into a life of crime<sup>67</sup>.

Collectively, evaluations and reviews are consistently indicating key practice areas that are having the most impact, including<sup>68</sup>: after-hours support; intensive wrap-around services; early intervention and prevention; programs for highest risk and serious repeat offender that target direct predictors of offending, including attitudes, behaviours and peers; services that work with the whole family; and place-based models that integrate into and leverage the local service system.

We **recommend** that the Queensland Government expand its investment in evidence-based programs and services run by the community sector, such as early intervention and early prevention programs, diversionary programs (including at the point of policing and court) and holistic support

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<sup>62</sup> Department of Youth Justice, Employment, Small Business and Training (2023). Brief to the Youth Justice Reform Select Committee.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Gillespie, E (2023). Nearly one in three children on Queensland's serious repeat offender list under protection order. The Guardian.

<sup>67</sup> Ibid.

<sup>68</sup> Department of Youth Justice, Employment, Small Business and Training (2023). Brief to the Youth Justice Reform Select Committee.

programs (including on release from custody) identified in the recent Justice Reform Initiative report on Queensland<sup>69</sup>. These programs, if properly resourced including longer funding cycles and funding for evaluations, will<sup>70</sup>:

- Significantly reduce recidivism for children and adults and in turn improve community safety.
- Successfully divert children and adults who are at risk of being involved in the criminal justice system.
- Strengthen families and communities, which are too often ‘managed’ in justice system settings rather than receiving the support, care and opportunities that improve their prospects.
- Result in significant cost-savings and substantial improvements in health and wellbeing across the community, including for victims.

The benefits of diversion include that if fewer children are arrested, and fewer children appear before the courts, more court time and resources can be dedicated to the children who remain in the system<sup>71</sup>. These children are likely to be the most vulnerable and have the most complex needs, and efforts should be directed towards their rehabilitation, not their punishment, if community safety is to be assured<sup>72</sup>.

The over-representation of children with cognitive disability in detention highlights the need for better and more robust options for diversion from the criminal justice system. The Royal Commission highlighted that<sup>73</sup>:

*Reports demonstrate traditional penal approaches, including detention, tend to be ineffective in reducing recidivism among young people, but they are also amongst the most costly means of dealing with juvenile crime due to high immediate costs and ongoing long-term costs to the juvenile justice system due to continued contact with the criminal justice system.*

Again, the importance of specific prevention measures, including early intervention, supportive programs and diversionary justice programs is emphasised by the Royal Commission, to ensure that children with disability are not involved with the criminal justice system in the first place. Diversion recognises cognitive disability can result in reduced culpability, making the application of traditional criminal law processes unfair or inappropriate<sup>74</sup>.

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<sup>69</sup> The Justice Reform Initiative (2023). Alternatives to incarceration in Queensland.

<sup>70</sup> Ibid.

<sup>71</sup> Walsh, T., Beilby, J., Lim, P., & Cornwell, L. (2023). Safety through support: Building safer communities by supporting vulnerable children in Queensland’s youth justice system.

<sup>72</sup> Ibid.

<sup>73</sup> Murphy, P., McGinness, A., McDermott, T. & Corriea, M. (2010). Review of effective practice in juvenile justice: Report for the Minister for Juvenile Justice NSW.

<sup>74</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). Final report.

We **support the recommendation** below from the Royal Commission<sup>75</sup>:

**Recommendation 8.21 Diversion of people with cognitive disability from criminal proceedings**

The New South Wales, South Australian, Victorian and Western Australian governments should review and fund their existing court-based diversion programs for people with cognitive disability charged with offences that can be heard in local or magistrates' courts to ensure the programs:

- are accessible and culturally appropriate, particularly in regional and remote areas
- provide support for defendants to access the National Disability Insurance Scheme (NDIS)
- satisfy service needs, including connecting defendants to appropriate education, housing, employment and other services.

The Australian Capital Territory, Northern Territory, Queensland and Tasmanian governments should develop and fund court-based diversion programs for people with disability charged with summary offences in local or magistrates' courts which:

- are accessible and culturally appropriate, particularly in regional and remote areas
- provide support for defendants to access the NDIS
- satisfy service needs, including connecting defendants to appropriate education, housing, employment and other services. All states and territories should commission independent evaluations of their diversion programs. Any evaluation should assess, and where feasible, quantify economic and social benefits for both individual defendants and the community as a whole.

**Watch houses**

We **recommend** that the Queensland government immediately stop the practice of detaining children in watch houses and find an immediate solution to prevent children and young people from experiencing harm due to the inappropriate conditions of watch houses.

**Exclusionary discipline in education**

We **support the recommendation** below from the Royal Commission<sup>76</sup>:

**Recommendation 7.2 Prevent the inappropriate use of exclusionary discipline against students with disability**

State and territory educational authorities should review all regulations, rules, procedures and other instruments regulating exclusionary discipline to ensure they:

- adopt the principle that education providers: should avoid the use of exclusionary discipline on students with disability unless exclusion is necessary as a last resort to avert the risk of serious harm to the student, other students or staff
  - in considering the use of exclusionary discipline, consider the student's disability, needs and age, and the particular effects of exclusionary discipline for young children

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<sup>75</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). Final report.

<sup>76</sup> Ibid.



◦ require steps to be taken before exclusion to ensure an individual behaviour plan and reasonable adjustments have been implemented for the student, including consultation with the student and their family, carers or supporters.

- include a duty for principals to report the repeated use of exclusionary discipline involving a student with disability to an escalation point within educational authorities for independent case management

- include a robust review or appeals process for students with disability and their families or carers and supporters

- ensure students with disability have access to educational materials appropriate to their educational and behavioural needs while subject to exclusionary discipline

- support students with disability to re-engage in education post exclusion.

State and territory educational authorities should review provisions governing the registration of non-government schools to impose obligations relating to exclusionary discipline in the non-government sector that are commensurate with those of the government sector.

Section 22(2)(b) of the Disability Discrimination Act 1992 (Cth) should be amended to cover 'suspension and exclusion' as well as expulsions.