

## Youth Justice Reform Select Committee inquiry into youth justice reform in Queensland

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# **Inquiry into Youth Justice Reform**

Submission by Legal Aid Queensland

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# Inquiry into Youth Justice Reform

## Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to provide a submission to the Youth Justice Reform Select Committee.

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997*, LAQ is established for the purpose of “giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way” and is required to give this “legal assistance at a reasonable cost to the community and on an equitable basis throughout the State”. Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ’s services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer policy input that is constructive and is based on the extensive experience of LAQ’s lawyers in the day-to-day application of the law in courts and tribunals. We believe that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

LAQ has the largest criminal law legal practice in Queensland and represents the most disadvantaged people charged with criminal offences. Youth Legal Aid (YLA), a division within that practice, is the largest practice in Queensland that solely focuses on representing children charged with offences. YLA provides representation, advice, and duty lawyer services throughout the State. They are a key stakeholder within the Childrens Court jurisdiction and provide training and resources to lawyers (both defence and prosecutors), police, youth workers and Departmental staff around Youth Justice practice. In recent years YLA has been responsible for the development and delivery of the Youth Justice Certification program, a program overseeing the training and certification of specialist youth justice practitioners throughout the State. YLA is also the author of the Youth Justice Practitioner Guide, published by LAQ, which is the pre-eminent publication in relation to Childrens Court practice in Queensland.

It is with a combination of knowledge from our general practice and YLA that the below feedback is provided.

## Diversion

LAQ supports diverting children away from the Criminal Justice system. The evidence supports a model which diverts children by offering them the opportunity to participate in

restorative justice conferences and through effective police cautioning.<sup>1</sup> A majority of children who are diverted do not reoffend after the diversion takes place.<sup>2</sup> Effective diversion can provide beneficial outcomes to the community and victims as well as the child and their family. LAQ has supported efforts by police to divert children by discussing the process with children and their families as part of the service offered on the Youth Legal Advice Hotline.

LAQ notes that in recent months there has been an increase in the amount of time it takes to complete a restorative justice conference which has resulted in a significant backlog. This is of particular concern for those children who have had sentencing proceedings delayed so that participation in a pre-sentence restorative justice process can occur.

### The Youth Justice cohort

There is a substantial body of research internationally and within Australia that indicates that there is an association between child maltreatment (abuse and neglect) and various social problems affecting children and young people, such as homelessness, substance abuse and suicide. In particular, there is consistent evidence for a link between child abuse and neglect and later offending and involvement in the juvenile justice system. *Australian Institute of Family Studies, Cashmore J, Family Matter,s no.89 2011.*

In the final report of the **Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Volume 8, Criminal justice and people with disability**, the commission noted the high prevalence of children with intellectual disabilities who are either sentenced or remanded in detention.<sup>3</sup>

The evidence gathered as part of recent commissions of inquiry and recent unrelated academic research, supports a conclusion that children who come into contact with the Youth Justice system have higher rates of neuro-disability, have more learning and cognitive deficits, have higher rates of mental illness, drug use, exposure to domestic violence and are more likely to have been the subject of physical and emotional neglect<sup>4</sup> and physical and sexual abuse than the non-offending cohort of similarly aged children.<sup>5</sup>

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<sup>1</sup> Department of Child Safety, Youth and Women (Qld), *Restorative Justice Project 12-Month Program Evaluation, Final Report* (2018) 59.

<sup>2</sup> *Ibid* 46 – 48.

<sup>3</sup> *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Criminal justice and people with disability*, (Final Report, September 2023) vol 8, 81 ('*Royal Commission Vol 8 Final Report*'); Children and Young People with Disability Australia, *Submission to Criminal justice system issues paper* (14 January 2020) 3; Department of Children, Youth Justice and Multicultural Affairs (Qld), *Youth Justice Census Summary*, (2022) 1.

<sup>4</sup> Judy Cashmore for Australian Institute of Family Studies, *The link between child maltreatment and adolescent offending*, (2011) no.89, 31.

<sup>5</sup> *Royal Commission Vol 8 Final Report* (n 3) 83; NSW Bureau of Crime Statistics and Research, *Offending by young people with disability: A NSW linkage study*, *Crime and Justice Bulletin*, no. 254 (2023) 2.

Many of the children who present with complex mental health needs or neuro-disability fall within the “serious repeat offender” cohort currently on remand or sentenced in youth detention.

YLA’s clients are often homeless, have been raped and/or sexually abused, have no family or adult support, have experienced domestic and family violence, have undiagnosed medical conditions and have been excluded from education.

Any alternate approach to addressing recidivism and to reduce the numbers of children in custody must focus on evidence-based interventions that can work with such a complex cohort.

These interventions must be delivered to the children who are detained within Queensland’s three detention centres. In recent years, LAQ’s clients who are in detention have experienced an absence of appropriate interventions, education and mental health services due to the practice of keeping children in solitary confinement due to staffing shortages. The practice of separation means that children are released from detention without being able to participate in programs or receive the help they need to cease reoffending.

LAQ also remains concerned that transition-to-community planning for children detained in Queensland is currently not fit for purpose. The complexity of the offending cohort requires detailed and comprehensive transition planning for both sentenced and remand detainees that further develops the interventions that start within the detention centres and links children and their families with supports in the community.

LAQ commends the work of Education Queensland in sending officers to court to assist families in returning their children to formal education and their continued presence in the youth detention centres.

### **Drug and alcohol abuse**

There is an absence of appropriate drug and alcohol rehabilitation facilities to address the abuse of substances by children including inpatient facilities. The first opportunity for many children to “detox” is when they are remanded in detention. This is of some concern as the detention centres do not have the expertise, staff or facilities to provide appropriate detoxification services for detainees.

### **Accommodation**

The lack of suitable and supported accommodation for children remains a significant issue within the youth justice system. There are too few youth accommodation providers and those that do exist principally focus on emergency accommodation rather than long term

accommodation. Children who experience unstable living arrangements are more difficult to engage in appropriate interventions.

The Child Safety system does not always provide stable and supported accommodation for children who are part of this complex cohort. LAQ has represented a number of children whose offending behaviour first commenced after being placed in the care of the state. The lack of appropriate foster carers and the reliance on group homes and temporary shelters are significant risk factors for children entering the criminal justice system. The percentage of “dual order” children in custody is significant.

### **The Childrens Court**

Proceedings in the Childrens Court can experience significant delay. Although most judicial officers attempt to expedite matters, the length of time for evidence and prosecution material to be disclosed, the time allowed for the Office of the Director of Public Prosecutions to present indictments and the lack of forensic clinicians to provide reports all lead to proceedings being delayed. It is important that children are dealt with quickly so that they understand that any sanction or punishment given to them by the court relates to the offending. The longer the delay in having matters finalised the less likely the child will link the punishment to the offending itself thus undermining the effectiveness of any court sanctioned intervention. It is often the case that children believe that onerous bail conditions or being remanded in custody constitute the punishment for their offending behaviour.

There are early signs that the Fast Track Sentencing Pilot in Brisbane, Southport, Cairns, and Townsville is an effective response to issues of delay in the lower court.

The ability for disabled children to understand the outcomes of court appearances is also compromised by the overuse of video-conferencing facilities. The facilities at the detention centres are of poor quality and the rooms are not soundproof. Videoconferencing is a significant barrier to a child being able to participate in the proceedings.

LAQ supports the appointment of specialist Childrens Court magistrates in all major population centres. The Childrens Court is a complex jurisdiction which requires magistrates to have specific knowledge in neuro-disability, trauma informed practice and be able to explain complex legal concepts in a way that children with educational and intellectual deficits can understand. Consistency in sitting magistrates allows a case management approach to children who offend which allows all stakeholders to be accountable in ensuring the child has access to appropriate interventions and support.

Consideration could also be given to conducting Childrens Court at the detention centres with magistrates. Conducting court in this way would eliminate some of the communication and participation barriers which are caused by the use of video link facilities. Having a

Childrens Court at the detention centre would require appropriate facilities and would need to be supported with legislative change. Once established the court has the potential to deliver significant efficiencies and allow children from remote areas to have their matters finalised expeditiously particularly for those children who have matters in courts that sit less regularly and where matters are adjourned for lengthy periods to accommodate the court calendar. This will lead to shorter periods of remand and allow children to commence their orders closer to the offending behaviour.

### **On Country programs and community involvement in remote locations**

LAQ does not hold the necessary expertise to comment on the effectiveness nor appropriateness of On-Country programs.

We note that there is often a lack of appropriate support and interventions for children who offend in remote communities. Youth Justice have no permanent presence in most remote communities and have to work in partnership with community organisations to provide support and interventions for children who offend. It is unclear whether there is any research or evaluation of the effectiveness of the support provided in many of these smaller communities. Effective interventions may require some divestment of responsibility from Youth Justice officers to the community organisations so that clear lines of reporting are established.

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