

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

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Committee Secretary
Youth Justice Reform Select Committee
Parliament House
George Street
Brisbane Qld 4000

Dear Committee,

Submission: Youth Justice Reform Select Committee

Please accept this short memo as my submission to the Inquiry into Youth Justice Reform in Queensland.

The intent of my submission is to focus some attention to an important challenge within the broad scope of youth justice reform.

The contents of this submission (overleaf) are based on independent research and analysis, which has included interviews with experts who prefer to remain anonymous.

Thank you for the opportunity to make this submission to the inquiry.

Yours Sincerely,

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Summary

There is an overrepresentation of young people living with (cognitive and intellectual) disability in the Queensland youth justice system. The magnitude of this overrepresentation is also not fully understood and is likely to be underestimated. The system's understanding of this issue is in its infancy, but there is strong evidence to suggest that addressing this problem has the potential to positively impact the outcomes of the system more broadly (see further in 'Analysis').

A multi-system approach to strengthened disability identification, assessment and support is recommended. This should occur in systems such as Courts and Youth Detention Centres, but primarily in community-based support to divert young people away from criminogenic exposure.

Analysis

Approximately 27-34% of young people in the Queensland youth justice system have a diagnosed or suspected cognitive, intellectual, or neurodevelopmental disability.¹ This is a large overrepresentation of the estimated 4-5% of the general population with cognitive or intellectual disabilities.²

There are multiple theories about why disability is overrepresented in the youth justice system: it is likely that all these theories account for it in some way. In summary, there is the fact that many cognitive and intellectual disabilities manifest in behaviours that, when left unsupported, contribute to criminal behaviours.³ Disabilities also compound already present socioeconomic disadvantages such as poverty, housing access and lack of education.⁴

There is also compelling evidence that the magnitude of this overrepresentation may be underestimated, including the study which found 89% of young people in a sample from the Banksia Hill Detention Centre had at least one severe neurodevelopmental impairment.⁵ Many young people in the justice system also lack the means to gain a formal disability diagnosis.⁶

Criteria

To address the challenge, the Select Committee must consider the following criteria when deciding between Options:

1. **Sustainability:** the option is likely to create changes that will 'stick'.
2. **Multiplier benefits:** the option is likely to create beneficial flow on changes, acknowledging that reform to address disability in youth justice is in its infancy and early investments should aim for high impact in a cost-effective manner.
3. **Cultural safety:** the option can feasibly achieve cultural safety for young people and families, particularly for Aboriginal and Torres Strait Islander peoples, given the overrepresentation of these young people in the cohort.⁷
4. **Knowledge facilitation:** the option can promote the generation of stronger information and data about disability in youth justice to empower iterative reform and decrease uncertainty.
5. **Feasibility:** the option is possible under current political and logistical constraints.

Options [See appendix for a detailed assessment].

1. Prioritise identification of disability in the system, in the short and long term.

At the heart of this challenge, is the lack of an appropriate screening tool and system of functional assessment for disability. Appropriate in this context means that a tool/system is culturally safe (to account for differences for Aboriginal and Torres Strait Islander young people), age-appropriate, pragmatic (can be readily used to confirm the presence of disability before seeking an official diagnosis), and robust (the assessment is peer-reviewed and tested to ensure validity).

This challenge exists, to varying levels, across States and Territories in Australia.⁸ Therefore, this option should involve, over the long term, the establishment of an Interjurisdiction Working Group with the goal of developing a nationally standardised disability screening tool and process for administering it. The Working Group would commission a project to design and test the new tool. Within this project, consideration must be given to when in the pre court and court pathway a screening tool can be administered in a psychologically safe manner. In the short term, Queensland should fund assessment capabilities in different parts of the system and use the Working Group to leverage any existing screening tools while the bespoke tool is created. Assessment is occurring somewhat in detention centres already⁹ but needs to also be established in community-settings (leveraging diversionary pathways and programs, as discussed below).

This option could help the system better understand the extent of the challenge, and potentially, unlock support for addressing underlying causes of reoffending behaviour.

2. Establish diversionary pathways for young people with disability.

As recommended in the Disability Royal Commission¹⁰, diverting young people out of court is widely considered a more feasible solution than reforming the courts process. Diversionary pathways should be family-centred, as disability support (including NDIS access) relies on the family in the long term to provide the young person support. Intensive Case Management is an example of a program in Queensland that has proven to be effective and could be leveraged.¹¹

There is a provision in Queensland for magistrates to dismiss charges for a young person if they are deemed of 'unsound mind' or 'unfit for trial' for either disability or mental health related reasons.¹² However, these provisions are rarely used. The equivalent provision in New South Wales was revised to give greater dismissal powers to magistrates.¹³ Queensland should review its current legislative practices, but not without greater funding and support for young people in the form of expanded or new diversionary programs that support disability diagnosis and access to requisite support. This would 1) prevent young people from simply cycling back into the system when their charges are dropped; 2) promote access to further funding through the NDIS; and 3) prevent the need for magistrates to delay trials to await a formal diagnosis from a psychiatrist.

3. Improve the capability of key sub-systems and actors.

There are two main ways government can improve the disability capability of sub-systems – through funding new specialist roles or funding and administering training. Specialist roles have the advantage of being able to do both. These roles will be needed for diversionary programs if government seeks to leverage existing programs. Disability specialists would also be useful in Youth Detention Centres and in Case Management teams within Youth Justice Queensland. Queensland Courts could also invest in disability training for magistrates and lawyers, and in creating accessible materials for young people and families.

Recommendation

The policy options are listed from most to least preferred. The rationale for this is that identification is the first step to support. The diversionary pathway is almost as important, and should be implemented in the short term, particularly as a way of not over-investing in a long-term process of assessment. Capability uplift is a good compliment to Options 1 and 2, but it is not recommended on its own. Creating new specialist roles within these systems will be ineffective without structural shifts and dedicated programs to empower change.

Overall, the recommendation is to implement all options to have a multi-faceted impact on the system and give government options to innovate. Option 1 will involve a longer-term commitment to innovation, while Options 2 and 3 can be implemented in the short-term through existing programs.

Appendix: Summary of options analysis

	1. Prioritise identification of disability in the system	2. Establish diversionary pathways for young people with disability	3. Improve 'disability capability' of key systems and actors
Sustainability	High: Greater investment in a tool that meets all requirements and is nationally accepted would create system 'lock in'. A risk to mitigate would be that lock in creates resistance to change if the tool is flawed.	High-Mid: If legislation change is combined with strong support pathways, this could result in fundamental behaviour change. If uptake is slow in courts, support pathways may go under-utilised.	Low: Positions can be discontinued, and the benefits of training are lost without consistent investment.
Multiplier benefits	High: Stronger identification of disability is likely to raise the profile of this issue among system actors, to the point where further support cannot be ignored. This identification will stimulate future demand for capabilities in the long term. It also gives families new information and may encourage formal diagnosis and NDIS access.	High: Strong diversionary pathways have many benefits, including keeping exposure to courts and YDCs low, increasing opportunities for diagnosis out of court (and future data collection), and case management support for other disadvantages that is disability informed.	Mid: Training and capability uplift can have significant multiplier benefits across a system. However, actors will ultimately conform to the incentives and processes they are bound by. For example, Courts could become highly capable at communicating with young people with disability, but without diversionary options or assessment they do not have the mandate to act in the young person's best interest.
Cultural safety	Mid: While the commissioned project can incorporate cultural expertise, the goal of a standardised tool across States and Territories may create trade-offs for the level of cultural safety the tool can achieve.	High: Pathways can be designed to be culturally safe. Existing case management programs that are tailored for Aboriginal and Torres Strait Islander families can be leveraged/ expanded.	Low: Specialist skills in disability and cultural safety are niche. Recruiting appropriate talent to hire and/or develop training may prove challenging.
Knowledge facilitation	High: An assessment tool that is consistently used would allow for a more robust indication of the overrepresentation of disability. Rates of disability could also be aggregated by setting (i.e., at-charge, courts, and in detention centres) to better understand where to target support.	Mid: Greater diversionary support would lead to increased diagnosis, but it is difficult to capture all young people in need of support without reliable assessment. It is also unlikely, that without a screening tool, that data collection through diversion would 'out-pace' data collected through assessment.	Mid: Capability uplift creates greater knowledge within the system. However, this knowledge exists in the complexity of people – it must be consistently updated and nurtured in the face of staff turnover and capability gaps in regional areas.
Feasibility	Mid: The option is politically feasible. It is logistically challenging due to the level of interjurisdictional coordination required. Cost will be shared among States and Territories, which increases feasibility, but the coordination and effort will mean the process takes time (likely multiple years).	High: If the option does not involve legislative change, the feasibility of a diversionary program is high. OR Mid: Legislative change will be time-consuming and challenging to mobilise among key stakeholders. However, experiences in NSW can be leveraged.	Low: Statewide capacity for the required expertise is very low. The NDIS has also created a high demand for these skills which are priced highly in the private market. This makes it difficult for government to recruit in a cost-effective manner.

Endnotes

1. Department of Children, Youth Justice and Multicultural Affairs (2022). Youth Justice Census Summary. <https://www.dcssds.qld.gov.au/resources/dcsyw/youth-justice/resources/census-summary-statewide.pdf>
2. Sackville, R., Bennett, B., Mason, J., Ryan, J.F., Galbally, R.L., & McEwin, A.J. (2023). *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Final Report*. Australian Commonwealth Government. <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Executive%20Summary%2C%20Our%20vision%20for%20an%20inclusive%20Australia%20and%20Recommendations.pdf>
3. NSW Law Reform Commission. (1996). Report 80 (1996): People with an intellectual disability and the criminal justice system. <https://lawreform.nsw.gov.au/documents/Publications/Reports/Report-80.pdf>
4. NSW Law Reform Commission. (1996). Report 80 (1996): People with an intellectual disability and the criminal justice system. <https://lawreform.nsw.gov.au/documents/Publications/Reports/Report-80.pdf>
5. Bower, C., Watkins, R. E., Mutch, R. C., Marriott, R., Freeman, J., Kippin, N. R., Safe, B., Pestell, C., Cheung, C.S.C., Shield, H., Tarratt, L., Springall, A., Taylor, J., Walker, N., Argiro, E., Leitao, S., Hamilton, S., Condon, C., Passmore, H.M., & Giglia, R. (2018). Fetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia. *BMJ open*, 8(2), e019605. <https://bmjopen.bmj.com/content/8/2/e019605>
6. Informed by stakeholder consultations.
7. Department of Children, Youth Justice and Multicultural Affairs (2022). Youth Justice Census Summary. <https://www.dcssds.qld.gov.au/resources/dcsyw/youth-justice/resources/census-summary-statewide.pdf>
8. Informed by stakeholder consultations.
9. Informed by stakeholder consultations.
10. Sackville, R., Bennett, B., Mason, J., Ryan, J.F., Galbally, R.L., & McEwin, A.J. (2023). *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Final Report*. Australian Commonwealth Government. <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Executive%20Summary%2C%20Our%20vision%20for%20an%20inclusive%20Australia%20and%20Recommendations.pdf>

11. 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*. The University of Queensland. <https://espace.library.uq.edu.au/view/UQ:55d7b70>
12. Nous Group. (2023). *Final report: Evaluation of Intensive Case Management*. https://desbt.qld.gov.au/__data/assets/pdf_file/0024/17457/icm-final-report.pdf
13. 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*. The University of Queensland. <https://espace.library.uq.edu.au/view/UQ:55d7b70>