



# Queensland Advocacy Incorporated

Our mission is to promote, protect and defend, through advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland.

*Systems and Individual Advocacy for vulnerable People with Disability*

[lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

12 July 2019

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

Dear Committee,

Thank you for giving QAI this opportunity to make a late submission.

Yours sincerely,

Michelle O'Flynn, Director

**Ph (07) 3844 4200 or 1300 130 582 Fax (07) 3844 4220 Email [qai@qai.org.au](mailto:qai@qai.org.au) Web [www.qai.org.au](http://www.qai.org.au)**

2nd Floor, South Central, 43 Peel Street, STH BRISBANE QLD 4101

QAI endorses the objectives, and promotes the principles, of the Convention on the Rights of Persons with Disabilities.

Patron: His Excellency The Honorable Paul de Jersey AC

## **About QAI**

Queensland Advocacy Incorporated (QAI) is a member-driven and non-profit advocacy organization for people with disability. Our mission is to promote, protect and defend, through advocacy, the fundamental needs, rights and lives of the most vulnerable people with disability in Queensland.

Our Human Rights and Mental Health services offer legal advice and representation on guardianship, administration and mental health matters. Our Justice Support and NDIS Appeals programs provide non-legal advice and support to people with disability in the criminal justice system and the NDIS. This individual advocacy informs our campaigns at state and federal levels for changes in attitudes, laws and policies and assists us to understand the challenges, needs and concerns of people with disability.

QAI's constitution holds that every person is unique and valuable and that diversity is intrinsic to community. People with disability comprise the majority of our board and their lived experience of disability is our foundation and guide.

**Key recommendations: Youth Justice and Other Legislation Amendment Bill 2019 ('the Bill')**

- Detention of children awaiting trial must be done in a way that is consistent with the UN *Convention on the Rights of the Child*,<sup>1</sup> and with the 'Beijing Rules',<sup>2</sup> and the Bill should ensure that the detention of children is:
  - a measure of last resort, and
  - for the shortest time possible.
  
- Where detention does occur, children must be segregated and kept in age-appropriate, non-prison like environments.
  
- The Bill should increase the Queensland minimum to 14 years. The minimum age of criminal responsibility for juveniles in Queensland is currently 10 years. The international standard is 12 years and in some countries, 15 years.
  
- Detention centres should be inspected by an independent body, wither pursuant to Australia's OPCAT obligations, or by Queensland establishing a new inspecting body.
  
- Queensland must work with Aboriginal and Torres Strait Islander community representatives to develop a systemic response to the over-representation of Aboriginal and Torres Strait Islander children in Queensland prisons.

---

<sup>1</sup> The CRC was adopted in 1989 and ratified by Australia in 1990. Many of its provisions are relevant to the sentencing process and detention.

<sup>2</sup> The United Nations General Assembly's [United Nations Standard Minimum Rules for the Administration of Juvenile Justice](#) G.A. res. 40/33, annex, 40 U.N. GAOR Supp. (No. 53) at 207, U.N. Doc. A/40/53 (1985) ('Beijing Rules') set out a number of 'Principles Applicable to Detention' that include that detention should be a 'measure of last resort' and 'for the shortest time possible'.

## Evidence

The *Youth Justice Act 1992* (Qld) 'Charter of youth justice principles' states that the youth justice system should uphold children's rights, including that children dealt with under that act should be treated with 'respect and dignity'.<sup>3</sup> Section 33 of the *Human Rights Act 2019* (Qld) – raises the bar for the protection of children in the criminal process and places an onus on legislators to ensure that accused children are brought to trial as quickly as possible and that the criminal justice system treats children age appropriately.

QAI commends the amending Bill's provision that will allow the Office of the Public Guardian's Community Visitor Program for Children to visit young people who reside at a child accommodation service provided or funded by the Department of Youth Justice.<sup>4</sup> However, the Bill as a whole is a missed opportunity to meet a number of Queensland's so far unmet human rights obligations.

In particular, Queensland has experienced an increase in youth detention, just as in adult detention, and that is placing extraordinary pressure on a system that already fails to meet basic human rights standards. In November 2016,<sup>5</sup> Queensland passed legislation to increase the youth detention age limit to 17, but this has contributed to a rise in the number of young people supervised by youth justice.<sup>6</sup> Among the states and territories, New South Wales and Queensland had the largest groups of young people under supervision, and young people in Queensland accounted for 29% of all Australian children under supervision on an average day.<sup>7</sup>

Around Australia, over 50 per cent of children in prison have not yet been convicted of a crime or sentenced. In Queensland, 87 per cent of children who are in detention are on remand, and almost 60 per cent of children in youth prisons in Queensland are Aboriginal and Torres Strait Islander children.

A disproportionate number of these children, whatever their custodial status, have a disability - most commonly cognitive impairment (often associated with Foetal Alcohol Spectrum Disorder), mental illness, or both (known as 'dual diagnosis'). There is no Queensland research that has determined the specific extent of this overrepresentation,<sup>8</sup> but research by Eileen Baldry et al on adult prisoners in New South Wales,<sup>9</sup> by Queensland Corrective Services in 2002<sup>10</sup> and

---

<sup>3</sup> Schedule 1; s 3 (a).

<sup>4</sup> The unscheduled presence of an independent third party is an important component of the 'checks and balances' required to prevent abuse in correctional systems and one of Australia's acknowledged obligations under the Optional Protocol to the Convention Against Torture.

<sup>5</sup> Enacted in February 2018.

<sup>6</sup> Australian Institute of Health and Welfare. *Youth justice in Australia 2017–18*, page vii.

<sup>7</sup> Australian Institute of Health and Welfare. *Youth Justice in Australia 2017-18*. Page 5.

<sup>8</sup> Queensland Corrective Services (QCS) recently has begun to screen prisoners for intellectual impairment on reception into the prison system, and QAI has approached QCS for the data.

<sup>9</sup> L Dowse, E Baldry, P Snoyman, C Macomish, M Clarence, 2010, *People with Mental Health Disorders & Cognitive Disabilities in the Criminal Justice System in NSW*.

<sup>10</sup> Queensland Corrective Services. 2002. *Intellectual Disability Survey*.

Queensland's Forensic Mental Health Service in 2013,<sup>11</sup> show that between 30-50 percent of prisoners have some kind of cognitive impairment or mental illness, about 10 percent of Queensland prisoners have intellectual disability,<sup>12</sup> and about 90% of Queensland Aboriginal or Torres Strait Islander prisoners have mental disorder.

It is not unreasonable to infer that a disproportionate number of young people in detention, particularly young Aboriginal and Torres Strait Islander people, have cognitive impairment and/or mental illness. People with multiple disabilities have significantly more contact with all levels of the criminal justice system than their prisoner peers who don't have a disability, coming under police scrutiny initially due to their disability and often as victims of abuse.

This group of Aboriginal people<sup>13</sup> is funnelled into the criminal justice system earlier in life. They receive little sustained support from community or disability services or the education system. These children, young people and adults are often just seen as badly behaved and too hard to control, and are left to police to manage. This is in contrast to those with multiple disabilities who come from areas and families with more resources who are supported through school, health and social and private services and who rarely become enmeshed in the criminal justice system.<sup>14</sup>

While in a watch-house, or youth detention, children do not have access to education and health care. Falling behind in schooling, in particular, has knock-on effects into a child's future, reducing choices and making it more likely that the child will return to detention as an adult. To note and to address the overrepresentation in youth detention of Aboriginal and Torres Strait Islander people with disabilities is the first step in preventing them, and their children too, from a lifetime of 'churning' through that system.

The Bill can include more provisions that address this ongoing tragedy — by including a provision to increase the permissible age for youth detention while on bail,<sup>15</sup> and a provision to increase the age of criminal responsibility to 14 years, releasing children who have not yet been convicted for the alleged offence/s for which they have been detained. By doing so, Parliament

---

<sup>11</sup>Heffernan EB, Andersen KC, Dev K and Kinner S.2013. Prevalence of mental illness among Aboriginal and Torres Strait Islander people in Queensland prisons.

<sup>12</sup> Queensland Corrective Services 2002. *Intellectual Disability Survey*.

<sup>13</sup> Mental disabilities include disorders such as clinical depression, schizophrenia, anxiety and psychosis. People can experience these for a short time or throughout their lives. Cognitive disability covers impairments such as intellectual disability, acquired brain injury, dementia and foetal alcohol spectrum disorder.

<sup>14</sup> Eileen Baldry. 2016. 'How the justice System Fails People with Disability - and How to Fix it.' <https://www.abc.net.au/radionational/programs/ockhamsrazor/australian-justice-system-disability-indigenous/7326240>

<sup>15</sup> The *Four Corners* investigation 'Inside the Watch House' (Australian Broadcasting Corporation, 13 May 2019) raised serious questions about whether the Queensland Government has breached its own laws by warehousing children in police cells designed for adults.

would implement our obligations under international law, reduce the number of children under supervision, and reduce pressure on scarce resources for the children that remain in detention.

.....