

Australia's Federal Youth Justice and Incarceration System Inquiry

Submission by Queensland Advocacy for Inclusion

To
Senate Legal and Constitutional Affairs Committee
October 2024

About Queensland Advocacy for Inclusion

Queensland Advocacy for Inclusion (**QAI**) is an independent, community-based advocacy organisation and community legal service that provides individual and systems advocacy for people with disability. Our purpose is to advocate for the protection and advancement of the needs, rights, and lives of people with disability in Queensland. QAI's Management Committee is comprised of a majority of persons with disability, whose wisdom and lived experience guides our work and values.

QAI has been engaged in systems advocacy for over thirty years, advocating for change through campaigns directed at attitudinal, law, and policy reform.

QAI also provides individual advocacy services in the areas of human rights, disability discrimination, guardianship and administration, involuntary mental health treatment, criminal justice, National Disability Insurance Scheme (**NDIS**) access and appeals, and non-legal advocacy for children with disability including in relation to education and youth justice. Our individual advocacy experience informs our understanding and prioritisation of systemic advocacy issues.

QAI is funded by the Queensland Government to coordinate the Queensland Independent Disability Advocacy Network (QIDAN). QIDAN members work collaboratively to raise the profile of disability advocacy while also working towards attitudinal, policy and legislative change for people with disability in Queensland.

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Background

QAI offers a youth advocacy service called the Young Peoples Program (YPP), which provides non-legal advocacy to children with disability from birth to eighteen years. YPP advocates support children to uphold their rights and interests and to increase control over their lives. One of the areas that YPP focuses on is youth justice, with our advocates working with children with disability who are engaged with the criminal justice system to uphold their rights and ensure their voices are heard.

Children with disability are significantly overrepresented in the criminal justice system. Though youth justice census data claims that up to 47% of children in custody have a disability,¹ in our experience the numbers are much higher. In fact, senior staff members from Queensland youth detention centres and other statutory bodies have disclosed to YPP advocates they believe almost 100% of children in custody have a disability.

To reduce youth crime, we must address the causes of crime and improve the way our criminal justice system responds to children with disability. Our submission is informed by the lived experiences of the children with disability we work with.

QIDAN endorsement

The following submission is endorsed by the Queensland Independent Disability Advocacy Network (QIDAN). QIDAN is a group of organisations that provide individual advocacy services to Queenslanders living with disability. The member organisations include Aboriginal and Torres Strait Islander Disability Network Queensland; Aged and Disability Advocacy; Amparo Advocacy Inc; Capricorn Citizen Advocacy; Mackay Advocacy Inc; People with Disability Australia; Queensland Advocacy for Inclusion; Rights in Action; Speaking Up For You; and TASC.

Introduction

Engagement with the criminal justice system can cause lasting harm to a child, particularly for those detained in youth detention centres and watch houses. It disrupts day-to-day life and impacts schooling and connections with family and peers. It can also lead to enduring stigmatisation that affects future education, social, and employment prospects. For Aboriginal and Torres Strait Islander children, incarceration impacts connection to culture and Country. Children in youth

¹ Department of Children, Youth Justice and Multicultural Affairs (2023). *Youth Justice Census Summary*. [online]. <https://www.dcssds.qld.gov.au/resources/dcsyw/youth-justice/resources/census-summary-custody.pdf>

detention and watch houses also face an increased risk of exposure to traumatic experiences such as abuse, neglect, violence, and isolation.²

For children with disability, this environment is more likely to result in detrimental effects to their physical, psychological, and emotional wellbeing while further increasing their risk of reoffending.³ QAI supports full deinstitutionalisation of people with disability and endorses the guidelines on deinstitutionalisation released by the Committee on the Rights of Persons with Disabilities (CRPD) in 2022.⁴ Additionally, the Disability Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability released its final report in September 2023 which recommended a total of 222 recommendations, including recommendations relevant to youth justice reform, and the implementation of international human rights obligations that directly impact criminalised children.

In acknowledgement of the significant overrepresentation of people with disability within the criminal justice system, we believe that deinstitutionalisation includes keeping children with disability out of detention settings.

QAI also recognise that our communities have the right to safety, and we believe that benefits of early intervention and prevention through the development of a National Standards for Youth Justice, which are consistent with Commonwealth and State obligations, is an effective way to address *causes* of crime. QAI takes the position that imprisoning children with disability fails to address the causes of crime and ultimately contributes to increasing youth crime rates and its impacts on our communities.

The prevention of entry and diversion of young, criminalised persons from the justice system with specific consideration of risk and protective factors that reduce crime

Research has repeatedly demonstrated that children engaged with the youth justice system are more likely to have been subject to socio-economic disadvantage, neglect, residential instability, and interrupted or sporadic participation in education.⁵ Placement in out-of-home care, mental health issues, and physical, intellectual, and cognitive disabilities are also known to increase a

² Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). *Criminal justice and people with disability*. [online]. p.81. <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%208%2C%20Criminal%20justice%20and%20people%20with%20disability.pdf>

³ Clancey G, Wang S & Lin B 2020. *Youth justice in Australia: Themes from recent inquiries*. Trends & issues in crime and criminal justice no. 605. Australian Institute of Criminology. <https://doi.org/10.52922/ti04725>.

⁴ United Nations Human Rights Office of the High Commissioner (2022). *CRPD/C/5: Guidelines on deinstitutionalisation, including in emergencies (2022)*. [online]. <https://www.ohchr.org/en/documents/legal-standards-and-guidelines/crpd5-guidelines-deinstitutionalization-including>

⁵ Judge Mark Marien (2012). 'Cross-Over Kids - Childhood and Adolescent Abuse and Neglect and Juvenile Offending'.

child's risk of engaging with the youth justice system.⁶ With this in mind, it is important to address the responses of law enforcement, the 'school to prison pipeline', care criminalisation, diversion practices, raising the age of criminal responsibility, and policies for responding to children who have been deemed unfit for trial.

Law enforcement

The criminalisation of children with disability is influenced by poor disability screening and a lack of disability awareness within the criminal justice system, including within law enforcement agencies. Disability screening and awareness is essential for preventing disability-related behaviours from being confused with criminogenic behaviours, and for ensuring that children with disability are treated appropriately from the first point of contact with law enforcement.

Greater understanding of disability can assist law enforcement officials to recognise the distinction and possible interaction between disability related behaviour and criminalised behaviour. When these distinctions are not recognised, law enforcement risks unnecessarily criminalising children with disability. In one such matter, YPP advocates supported a child who was engaged with the youth justice system. The child's first interaction with law enforcement occurred after an incident that was related to his disability and trauma. The child attended a hospital and learned that his father passed away. In response to the news, the child became very distressed, and the situation triggered a response that resulted in the child unintentionally harming hospital staff. Police were called to deescalate the situation and subsequently arrested the child. Consequently, the child entered the criminal justice system, and they were eventually detained in a youth detention centre. With this in mind, we emphasise that appropriate disability-related support can often reduce an individual's interaction with the criminal justice system.⁷

We note that the occurrence and nature of disability is not recorded sufficiently by law enforcement and other bodies in the criminal justice system.⁸ This can be observed by comparing YPP's experiences to the limited census data provided in the current Youth Justice Census Summary.⁹ Identifying the rate and nature of disability in data is essential for ensuring that the criminal justice system is adequately prepared for working with children with disability and for further understanding the systemic barriers that contribute to youth crime. Recommendation 8.4 from the Disability Royal Commission's final report calls for the screening and assessment of disability in youth detention centres, a proposal that the Queensland Government has accepted in

⁶ Judge Peter Johnstone, President of the Children's Court of NSW (2014). Emerging Developments in Juvenile Justice. 5th Annual Juvenile Justice Summit.

⁷ The Office of the Public Advocate (2014). *The need for a disability justice plan in Queensland*. [online]. p.7. https://www.justice.qld.gov.au/__data/assets/pdf_file/0006/271095/Submission-FINAL-ADCQ-PA.pdf.

⁸ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). *Criminal justice and people with disability*. [online]. p.234. <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%208%2C%20Criminal%20justice%20and%20people%20with%20disability.pdf>

⁹ Department of Children, Youth Justice and Multicultural Affairs (2023). *Youth Justice Census Summary*. [online]. https://desbt.qld.gov.au/__data/assets/pdf_file/0022/17086/census-summary-statewide.pdf

principle.¹⁰ In light of this, QAI supports the recommendation and urges the implementation of policies to ensure that disability is properly identified amongst children engaged with, or at risk of engaging with, the youth justice system. This could include a mandatory preliminary assessment of every child who interacts with law enforcement officials. We further recommend that such assessments occur prior to any actions that would result in the criminalisation or institutionalisation of a child with disability.

Education and the school to prison pipeline

It is clearly demonstrated that the risk of criminalisation is increased when a child has a poor experience in the education system.¹¹ In YPP's experience, school is often the first environment where children are repeatedly punished for their disability-related behaviour. YPP advocates frequently work with children with disability who have been suspended, excluded, or repeatedly disciplined, directly caused by inadequate disability support at school. Research continues to demonstrate that students with disability are suspended and excluded at disproportionate rates and are more likely to be suspended if they are also in out-of-home care or from an Aboriginal and Torres Strait Islander background. For example, students with a disability accounted for only 18.9% of enrolments in 2020 yet received 49.2% of all short suspensions (1-10 days). This equates to 2.18 suspensions on average per student.¹² Research has also found that in 2019, Aboriginal and Torres Strait Islander students with disability who lived in out-of-home care had 7.8 times the risk of being issued a short suspension, compared to students who were not in these marginalised groups.¹³

Poor disability supports and subsequent missed classroom time entrench educational disadvantage for marginalised students. For some children, a sense of hopelessness surrounding their ability to succeed in education can lead them to disengage with schooling and seek other ways to gain attention from their peers. YPP advocates have observed the clear link between the failure of Education Queensland to provide adequate reasonable adjustments and the subsequent disengagement from school by children with disabilities.

Children with disability who experience school exclusion and disengagement face a heightened risk of criminal justice system interactions. The term 'school to prison pipeline' describes how poor experiences at school, like a lack of support for students with disability and punitive disciplinary

¹⁰ Queensland Government. (2024). *Queensland government response to the Disability Royal Commission* [online]. Retrieved from https://www.dcsds.qld.gov.au/__data/assets/file/0011/14321/queensland-government-response-disability-royal-commission.pdf

¹¹ Novak, A., & Fagan, A. (2022). Expanding Research on the School-to-Prison Pipeline: Examining the Relationships between Suspension, Expulsion, and Recidivism among Justice-Involved Youth. *Crime & Delinquency*, 68(1), 3-27. [online]. <https://doi.org/10.1177/0011128721999334>

¹² Graham, Killingly, Alexander & Wiggins (2023). Suspensions in QLD State Schools 2016 – 2020: overrepresentation, intersectionality and disproportionate risk. [online]. Suspensions in QLD state schools, 2016–2020: overrepresentation, intersectionality and disproportionate risk (springer.com)

¹³ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). *Criminal justice and people with disability*. [online]. p.14. <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%208%2C%20Criminal%20justice%20and%20people%20with%20disability.pdf>

practices, can impact a student's wellbeing and functioning over time. Such negative experiences effectively create a pipeline into the criminal justice system.¹⁴ Research has discovered that up to 80% of children in the criminal justice system have been suspended from school, and more than 50% have faced expulsion.¹⁵

QAI is currently leading a coalition of organisations campaigning for inclusion and support for children with disability at school on the 'A Right to Learn' campaign.¹⁶ QAI also supports the recommendation from the 'Review to Inform a Better and Fairer Education System',¹⁷ that inclusive education policies should be codesigned with students with disability. Research supports QAI's experience that when children with disability have the support they need to succeed at school, they are less likely to become disengaged from education and less likely to have contact with the criminal justice system. Therefore, preventing children from entering the criminal justice system relies on reducing school exclusions in Queensland, which is an essential step in ending the 'school to prison pipeline'.

¹⁴ Novak, A., & Fagan, A. (2022). Expanding Research on the School-to-Prison Pipeline: Examining the Relationships between Suspension, Expulsion, and Recidivism among Justice-Involved Youth. *Crime & Delinquency*, 68(1), 3-27. [online]. <https://doi.org/10.1177/0011128721999334>.

¹⁵ Ibid.

¹⁶ A Right to Learn (2024). *A right to learn*. [online]. <https://www.arighttolearn.com.au/>

¹⁷ Australian Government (2023). *Improving Outcomes for All: Australian Government Summary Report of the Review to Inform a Better and Fairer Education System*.

Case Study – the school to prison pipeline

Toby* is a 13-year-old child with disability. His father, Michael*, contacted YPP when Toby was excluded from his high school, following an accusation from peers that he had brought illicit substances to school. Michael and Toby stated the accusation was unproven and false and asked for assistance in appealing the exclusion.

Toby was a motivated student who loved his local school. The previous year, Toby had excelled when he had substantial reasonable adjustments in the classroom and playground, including a full-time teacher aide to support his learning. Toby was given other strategies, such as communication cards which gave him permission to leave the classroom and go to the school counsellor's office when he felt overwhelmed. During this time, he also had no behavioural incidents and had developed close friendships.

Unfortunately, these adjustments were removed which substantially affected Toby's learning and experience at school. He told his father that he was frustrated and embarrassed that his schoolwork was too hard for him. These feelings were intensified when other students started to bully Toby, and he was involved in several physical fights with other students.

Michael had made several requests for meetings with stakeholders and the return of adjustments which had previously worked very well for Toby. Many of these adjustments, such as the communication cards, did not require increased funding. These requests were denied or remained unanswered.

After several physical incidents with classmates, Toby was given a notice informing him that he would be excluded from his school. The primary reason for this was that another student had claimed to see illicit substances in Toby's pocket at school. Toby's pockets and bag were searched by staff and no substances were found, but the school concluded that "on the balance of probability", the accusation was true.

A YPP advocate assisted Toby and Michael to communicate with the school to clarify information and write a letter to appeal Toby's exclusion with the Education Queensland regional office. Two months later, they received a notice that the exclusion would be upheld.

The advocate then started assisting Michael and Toby to find a new school. This process was extremely difficult, particularly as the family were having financial difficulties and did not have a car. Toby was eager to go back to school, but after 6 months of not attending school, they still did not have a suitable option that would accept him. Michael stated that Toby was frustrated and extremely bored. During this time, he had his first contact with the criminal justice system. Michael was extremely concerned that Toby would continue to be criminalised during this period where he was not attending school.

**Name has been changed to protect identity*

Care criminalisation

There is a notable connection between children who are involved in the child safety system and the criminal justice system, with children in child safety's care experiencing a higher risk of life-long involvement in the criminal justice system.¹⁸ The Disability Royal Commission explored this intersection, finding that factors such as delayed diagnosis of disability, a lack of connection to culture, and a lack of support for transitioning out of the child safety system are associated with an increased risk of criminalisation for children with disability.¹⁹

When a child is in residential care, it is not uncommon for police to be called to respond to an incident or perceived problem behaviour. Comparatively, if a child is with their family, the same matter is often dealt with by parents or other informal supports without the need for police intervention. Children with disability in child safety settings who are criminalised often exhibit behaviour typically related to neurodiversity, mental health challenges, complex trauma, or a combination of these factors.²⁰ With this in mind, QAI supports the Disability Royal Commission's recommendations relating to care criminalisation, including the recommendation to adjust protocols between residential out-of-home care providers and police to minimise the criminalisation of children.²¹

Reducing the number of children in child safety care who are engaged in the criminal justice system requires the strengthening of protective factors. This includes prioritising trauma-informed support for children in care, screening for disability and seeking formal diagnosis where required, applying for the NDIS on behalf of the child with disability, and assisting the child to access appropriate disability-related supports and services. Furthermore, strengthening the professional support that children with disability receive in care has been linked in reduced criminalisation rates.²² It is also essential to recognise the benefits of strengthening a child's informal support networks. Providing practicable support to family and kin of children with disability in the child safety system can build resilience, which ultimately helps to reduce the rate of care criminalisation.

¹⁸ Queensland Family and Child Commission (2018). *The criminalisation of children living in out-of-home care in Queensland*. [online]. <https://www.qfcc.qld.gov.au/sites/default/files/2022-06/The%20criminalisation%20of%20children%20living%20in%20out%20of%20home%20care%20in%20Queensland.pdf>

¹⁹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). *Research report: Care criminalisation of children with disability in child protection systems*. [online]. <https://disability.royalcommission.gov.au/system/files/2023-05/Research%20Report%20-%20Care%20criminalisation%20of%20children%20with%20disability%20in%20child%20protection%20systems.pdf>

²⁰ Disability Royal Commission (2023). *Care Criminalisation of children with disability in child protection systems*. [online]. <https://disability.royalcommission.gov.au/system/files/2023-05/Research%20Report%20-%20Care%20criminalisation%20of%20children%20with%20disability%20in%20child%20protection%20systems.pdf>

²¹ Ibid. p104.

²² Homel R et al. (2015). *Preventing the onset of youth offending: The impact of the Pathways to Prevention Project on child behaviour and wellbeing*. Trends & issues in crime and criminal justice no. 481. Australian Institute of Criminology. [online]. <https://www.aic.gov.au/publications/tandi/tandi481>

Diversion

All levels of the criminal justice system should prioritise diversion practices for children with disability. Diversion practices are used to divert people with disability from the criminal justice system as much as possible and can be implemented at any stage. For instance, law enforcement can practice diversion by screening an accused child for disability and choosing to use cautions or by directing the child to disability-appropriate services. Diversion can also occur during the judicial process, where children with disability can be ordered by the court to attend diversion programs, such as therapeutic programs which aim to improve positive behaviour for people with cognitive disabilities, during the sentencing phase. Diversion practices are focused on rehabilitation and positive behavioural change and have greater success with addressing core issues that cause criminalised behaviour.

Raising the age

The earlier that a child is engaged with the criminal justice system, the greater their chance of becoming enmeshed in the system.²³ Research has found that 81% of children who were aged 10 at their first youth justice supervision had an interaction with the child protection system.²⁴ The Queensland Government rejected the Disability Royal Commission's recommendation 8.22 to raise the criminally responsive minimum age to 14.²⁵ With this in mind, QAI, along with the broader community sector and numerous international human rights bodies, take the position that the age of responsibility must be raised to 14. QAI fully endorse the Disability Royal Commission's recommendation²⁶ and the 'Raise the Age' campaign.²⁷ Raising the age would reduce the rates of children being criminalised and consequently institutionalised for their behaviour.²⁸ Rehabilitative responses must replace punitive practices to criminalised behaviour for all children, with those under the age of 14 being a priority for these responses.

²³Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). *Criminal justice and people with disability*. [online]. p.283. <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%208%2C%20Criminal%20justice%20and%20people%20with%20disability.pdf>

²⁴ Australian Institute of Health and Welfare (2022). *Young people under youth justice supervision and their interaction with the child protection system 2020-21*. [online]. <https://www.aihw.gov.au/reports/youth-justice/young-people-under-youth-justice-supervision/summary>

²⁵ Queensland Government. (2024). Queensland government response to the Disability Royal Commission [online]. Retrieved from https://www.dcsds.qld.gov.au/__data/assets/file/0011/14321/queensland-government-response-disability-royal-commission.pdf

²⁶ Disability Royal Commission. (2023). *Final report: Volume 8, Criminal justice and people with disability* [online]. <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%208%2C%20Criminal%20justice%20and%20people%20with%20disability.pdf>

²⁷ Raise the Age. *Raise the age*. [online]. <https://raisetheage.org.au/campaign>

²⁸ Disability Royal Commission (2023). *Criminal Justice and People with Disability*, v8, s9.5, p309. [online].

<https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%208%2C%20Criminal%20justice%20and%20people%20with%20disability.pdf>

Children deemed unfit for trial

In the experience of our advocates, many children in the youth justice system are likely to be deemed unfit for trial. The *Mental Health Act 2016* (Qld) applies to a child charged with an offence in the same way that it applies to an adult.²⁹ This means that there is no substantial difference between the process or specific considerations made relevant to determining a child's fitness for trial. Furthermore, in our experience, children who have been deemed unfit for trial continue to be inappropriately arrested and detained in watch houses and youth detention centres.

QAI takes the position that when a child is deemed to be unfit for trial and is subsequently arrested, the following should be implemented as a custody diversion program:

- a) the police file should clearly state if the child has been previously deemed unfit to stand trial;
- b) notes should be made on the child's file regarding any applicable disability or impairment, required disability specific adjustments, and the reason the child was deemed unfit;
- c) the child's support network, such as their family, carer or case worker, should be notified of their arrest as soon as possible;
- d) if the child's file states they have been deemed unfit for trial, reasonable adjustments should be made, and they should not be processed through the youth justice system; and
- e) the child should be referred to alternate appropriate services.

The objective of this approach is to prevent the continuous cycle of children who are not fit for trial being held indefinitely in youth detention centres and watch houses, which are not appropriate for children with disability, and are frequently the site of various human rights infringements. QAI's proposed approach, as outlined above, aligns with the Report on Youth Justice by Bob Atkinson Officer of the Order (AO),³⁰ which formed the basis of Queensland's Youth Justice Strategy and Action Plan.³¹

A custody diversion program for children deemed unfit to stand trial, such as the program outlined above, would require legislative amendments to

- a) the *Police Powers and Responsibilities Act 2000* (Qld);
- b) the *Youth Justice Act 1992* (Qld); and
- c) the *Bail Act 1980* (Qld),

²⁹ *Youth Justice Act 1992* (Qld) s 61.

³⁰ Atkinson, B (2018). *Report on Youth Justice v2*. Department of Child Safety, Youth and Women. [online]. <https://www.dcssds.qld.gov.au/resources/dcsyw/youth-justice/reform/youth-justice-report.pdf>

³¹ Queensland Government (2018). *Youth Justice Strategy 2019-2023*. [online]. https://desbt.qld.gov.au/__data/assets/pdf_file/0022/17149/strategy.pdf.

to provide clear alternate pathways other than detention. Currently, the legislation listed above that governs youth justice does not address the situation of children deemed unfit to stand trial. Further, these pieces of legislation do not reconcile with s 122 of the *Mental Health Act 2016* (Qld) which provides for the discontinuance of proceedings against a person deemed permanently unfit for trial.

Case Study – when the criminal justice system is not the right response

Christie* is a 14-year-old Aboriginal girl from a loving family. She has cognitive impairment as a result of Foetal Alcohol Spectrum Disorder. Christie has difficulty understanding the law, sometimes engages in problem behaviour, and seeks friendships with a group of girls who have regular contact with the police. Christie has expressed that she adopts problem behaviour as a way of fitting in with her peers.

Christie has been arrested and taken to the watch house and youth detention centre in regional Queensland repeatedly. Christie received an assessment of 'unsound mind' and has been deemed unfit for trial, meaning she does not have the capacity to be held criminally responsible for her actions. Despite this, law enforcement continues to detain her in the watch house or youth detention centre when she exhibits problem behaviour, rather than refer her to appropriate health or disability support services.

Christie's guardian, Sally*, is a qualified health professional, but unfortunately law enforcement has no official plan in place to contact Sally when Christie is arrested. Sally reports inconsistent notifications of Christie's arrests and hospitalisation. Concerningly, Christie is known to engage in self-harming behaviour.

When Christie is detained in a watch house, she has difficulty communicating her needs and experiences acute distress resulting in loud and repetitive vocalisations. She has difficulty understanding the rules of the watch house and has been detained in solitary confinement. During one occasion, law enforcement officers placed Christie into a solitary confinement cell with significant force and closed the door of the cell onto Christie's arm. Christie suffered an injury to her arm and urinated in her clothing.

Christie has disclosed that when she is in a panicked and heightened state in the watch house, she cannot eat or drink. Her distress can lead her to urinate herself.



The image above is taken from CCTV footage of the watch house cell that Christie was held in for solitary confinement.

**Name has been changed to protect identity*

Effective ways to stop recidivism and protect the community from offending and the opportunity for community-controlled organisations with specific reference to the role of First Nations peoples to provide support solutions and services

Children with disability are not only grossly overrepresented in the criminal justice system; they also face a higher risk of recidivism when convicted of criminal offences and placed in detention settings.³² The Australian Institute of Health and Welfare found that 80% of children who were released from sentenced detention between 2017 to 2018 returned to the criminal justice system within twelve months of their release.³³ Youth detention centres and watch houses are therefore failing to address the root causes of crime and are failing to provide adequate disability-aware rehabilitation programs that are accessible to the majority of children detained within the facilities. Reducing recidivism and protecting community safety thus relies on the criminal justice system changing its approach to criminalised children with disability.

Provide reasonable adjustments

Ending recidivism requires the criminal justice system to provide developmentally and disability-appropriate responses to perceived problematic behaviour. Children with disability who are in contact with the criminal justice system have the right to reasonable adjustments, according to the Convention on the Rights of Persons with Disabilities.³⁴ This includes accessible judicial processes that ensure a child is fully supported to understand and participate in proceedings. However, YPP advocates have worked with children who seem to have little-to-no understanding of their judicial matters. Reasonable adjustments should also include provisions such as diversionary options for children with disability, appropriate use of specialist disability courts, and judicial powers to dismiss charges when disability is a contributing factor to criminalised behaviour. It is also essential ensure that diversionary programs and youth detention settings are accessible and safe for all children with disability.

Improve Transitional Support

Reducing the risk of recidivism also relies on effective and intensive transitional support for children exiting the criminal justice system. Many of YPP's clients in youth detention have very poor transitional supports in place. YPP advocates have worked with children facing release without access to the NDIS or appropriate support services, suitable housing, or access to money or

³² Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). *Criminal justice and people with disability*. [online]. p.43. <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%208%2C%20Criminal%20justice%20and%20people%20with%20disability.pdf>

³³ Australian Institute of Health and Welfare (2020). *Young people returning to sentenced youth justice supervision 2018-2019*. [online]. <https://www.aihw.gov.au/reports/youth-justice/young-people-returning-sentenced-supervision-2019/contents/summary>

³⁴ United Nations (2006). *Convention on the Rights of Persons with Disabilities*. [online]. p.11. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>

financial support. YPP advocates have also worked with children in detention who have been kept in custody on remand purely because they do not have appropriate housing to be released to.

It is imperative that the unnecessary imprisonment of children is avoided, as required by the United Nations Convention of the Rights of the Child.³⁵ Where a child does not have suitable housing in place for their release, it should be the responsibility of systems such as child safety, the NDIS, and the State to ensure that appropriate accommodation options are available. Successfully transitioning out of the criminal justice system should also involve family support, cultural support, and rehabilitative support for substance misuse if appropriate. Several clients have disclosed to YPP that they reengaged with substances upon release because of stress in their social and family life, and eventually reoffended due to the substance misuse. Transitional planning must begin as soon as a child first enters the criminal justice system and should be co-designed with the child themselves.

It is also vital that Aboriginal and Torres Strait Islander-specific transitional support remains culturally safe and supportive while considering culturally appropriate accommodation and support for family and kin. With this in mind, QAI fully endorse transitional supports developed and facilitated by First Nations community-controlled organisations. For recidivism to be truly avoided, children must be transitioned out of the system with the tools they need to live safely in the community.

Make bail accessible

QAI believes that the changes made to bail conditions for children outlined in the *Strengthening Community Safety Act 2023*³⁶ (Act) increase the risk of recidivism. In a submission made in February 2023, QAI described how the Act's changes to bail conditions disadvantage children with disability, particularly conditions that involve residency, reporting, and attendance at appointments.³⁷ YPP advocates have observed that many children in youth detention settings experience housing instability and lack the ability to travel and attend appointments. Furthermore, bail conditions concerning attendance at appointments negatively impact children with disability who have difficulty understanding and recalling information. Further punishing and criminalising children who are unable to meet unattainable bail conditions is not acceptable and creates more opportunity for recidivism.

³⁵ United Nations Office of the High Commissioner Human Rights (1989). *Convention on the Rights of the Child*. [online]. p14. <https://www.unicef.org/media/52626/file>

³⁶ Queensland Legislation. (2023). *Strengthening Community Safety Act 2023*. [online]. <https://www.legislation.qld.gov.au/view/pdf/asmade/act-2023-003/lh>

³⁷ Queensland Advocacy for Inclusion (2023). *Strengthening Community Safety Bill 2023*. [online].

<https://qai.org.au/wp-content/uploads/2023/03/Strengthening-Community-Safety-Bill-2023-to-EGC-Feb-2023.pdf>

The efficacy of justice programs including on-country programs, education, health and housing services

Children in the youth justice system often have complex needs that are not addressed by mainstream consequences to offending, like youth detention. QAI endorses justice programs that address the fundamental needs of children in the youth justice system, such as education, housing, and health programs. Furthermore, we endorse justice programs that are developed by First Nations Peoples in response to the needs and wishes of First Nations children. We emphasise and echo the Disability Royal Commissions recommendation for assistance from First Nations organisations for children in custody, which the Queensland Government has accepted.³⁸ We emphasise that any justice program must be fully accessible, culturally safe, and responsive to the needs of the individual. Furthermore, we emphasise that children need to be placed as close to their family and community as possible.

The efficacy of evidence-based early intervention and prevention programs

QAI takes the position that evidence-based early intervention and prevention programs can reduce the risk of recidivism for children with disability, and that it is important to implement these programs before a child enters the criminal justice system. The Youth Justice Strategy 2019 to 2023 highlights the importance of early intervention, noting the significance of improved support in schools and within the community.³⁹ Unfortunately, The Youth Justice Strategy reports that 52% of children involved in the Youth Justice system were disengaged from education, employment, or training at the time of their alleged offending.⁴⁰ Early intervention and prevention programs that take a therapeutic approach to addressing issues such as disengagement from education are proven to be successful. For instance, the 'Transition 2 Success' (T2S) program provides alternative education and training opportunities, like TAFE and training in community organisations, to children in the criminal justice system. Since 2018, 95% of graduates from the program have successfully transitioned to education, training or employment, and 57% of participants did not reoffend within the first six months of participation in the program.⁴¹ Evidence-based early intervention and prevention programs offer opportunities for children to remain engaged in education and other services, while also addressing the deeper underlying issues that lead to criminalised behaviour.

³⁸ Queensland Government. (2023). *Queensland government response to the Disability Royal Commission* [online]. Retrieved from https://www.dcssds.qld.gov.au/__data/assets/file/0011/14321/queensland-government-response-disability-royal-commission.pdf

³⁹ Queensland Government. *Youth Justice Strategy 2019 – 2023*. [online]. https://desbt.qld.gov.au/__data/assets/pdf_file/0022/17149/strategy.pdf

⁴⁰ Queensland Government. *Youth Justice Strategy 2019 – 2023*. [online]. p6. https://desbt.qld.gov.au/__data/assets/pdf_file/0022/17149/strategy.pdf

⁴¹ Ibid. p11.

Furthermore, these programs are generally person-centred and flexible to meet individual needs, making them a more developmentally appropriate response to criminalised behaviour compared to consequences like youth detention.

The efficacy of reducing the numbers in custody on remand

The Australian Institute of Health and Welfare report that during 2021 to 2022, nearly 90% of children in detention in Australia were unsentenced and detained on remand.⁴² Detention causes major disruptions in a child's family, social, and schooling life and exposes children to higher rates of violence, neglect, abuse, and isolation. Furthermore, detention has been linked to lower educational attainment, difficulties with maintaining interpersonal and social relationships, higher risk of substance misuse, poorer mental and physical health and wellbeing outcomes, and heightened risk of suicidality.⁴³ Subjecting children to these circumstances can significantly increase the risk of long-term recidivism and harm,⁴⁴ and thus does little to protect the community and public safety.

It is important to note that people detained on remand are entitled to the presumption of innocence,⁴⁵ and therefore should be provided with remand options that protects their rights. QAI takes the position that children with disability should not be detained in custody on remand. We emphasise the need for children who are on remand to be supported to safely stay in their communities where they can remain connected to their family and social network. Clearly, community-based remand would significantly reduce the number of children in custody in detention. If detention-based remand were to continue, detention facilities need considerable reform. For instance, the Disability Royal Commission's final report suggests the implementation of separate facilities for children detained on remand and children who have been sentenced and discusses how this arrangement could protect the presumption of innocence.⁴⁶

⁴² Australian Institute of Health and Welfare (2023). *Youth Justice in Australia 2021 – 22*. [online].

<https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2021-22/contents/state-and-territory-fact-sheets/queensland>

⁴³ Queensland Family & Child Commission (2022). *Designing a better response to youth offending in Queensland: raising the age of criminal responsibility*. [online]. p.21. https://www.qfcc.qld.gov.au/sites/default/files/2022-09/Designing%20a%20better%20response%20to%20youth%20~%20Raising%20the%20age%20of%20criminal%20responsibility%20Issues%20paper_0.pdf

⁴⁴ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). *Criminal justice and people with disability*. [online]. p.311. <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%208%2C%20Criminal%20justice%20and%20people%20with%20disability.pdf>

⁴⁵ United Nations Office of the High Commissioner of Human Rights (1966). *International covenant on civil and political rights*. Article 10. [online]. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

⁴⁶ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). *Criminal justice and people with disability*. [online]. p.155. <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%208%2C%20Criminal%20justice%20and%20people%20with%20disability.pdf>

QAI acknowledges that children with disability will realistically continue to face detention on remand in the short-term. With that in mind, it is essential that we improve remand conditions. For example, children in custody on remand must be safeguarded against indefinite detention. YPP advocates have observed that children with disability detained on remand often have no clear indication of how long they will be detained for, nor do they have any practical pathways out of remand that are within their control. In addition, youth detention centres must change to uphold the presumption of innocence for those on remand, and affected children must be able to exercise their rights. The majority of YPP clients in youth detention are detained on remand, yet they are still subjected to lockdowns, solitary confinement, and strict disciplinary action like preventing them from engaging in preferred activities as punishment. Finally, we stress that youth detention must be rehabilitation-focused and children in custody on remand must be provided with adequate access to education, socialisation, support services, and transitional support. QAI make these suggestions with the aim to safeguard the rights of children detained in custody on remand; however, we emphasise that QAI ultimately calls for the end of detention-based remand and for investment in alternatives to detention for children with disability.

Government responses to crime must aim to address the *causes* of crime. In the case of our clients, the cause of criminalised behaviour is often linked to the repeated failure of responsible adults or government departments to provide disability appropriate services or care. In Sweden, the Special Care Measures allow courts to delegate to specific social services the responsibility of addressing causes of crime at the time of sentencing.⁴⁷ We suggest that a similar approach may be appropriate. With regard to children with disability, such an approach could include referrals to support services that address disability-related needs related to the criminal offence. Addressing the cause of crime rather than punishing crime can effectively protect community safety in the long-term.

The efficacy of alternatives to detention

As statistics repeatedly show, detaining children with disability in youth detention is not an effective means for reducing recidivism nor protecting the safety of the community. Detention settings, including watch houses, are traumatising and harmful and can heavily contribute to the risk of recidivism. With this in mind, we endorse evidence-based alternatives to detention.

YPP Advocates have heard from clients that alternatives to detention, such as Conditional Release Orders, offer real opportunities for growth and meaningful change, and can better provide developmentally appropriate responses to offending behaviour. Alternatives cultural programs, care and support coordination, therapeutic programs, and restorative justice can also effectively address the underlying causes of criminalised behaviour.

⁴⁷ International Juvenile Justice Observatory (2012). *Alternatives to custody for young offenders*. [online]. https://www.oijj.org/sites/default/files/archivospaginas/baaf_sweden1.pdf

Comparatively, punitive responses to criminalised behaviour, like detention, can exacerbate risk-factors and can impact a child's social, educational, and employment prospects. If the criminal justice system responds to a child's behaviour in a way that is rooted in personal development and rehabilitation, there is more opportunity for positive transformation. With that said, QAI stresses that all alternatives to detention must be disability-aware, accessible, and culturally responsive.

The efficacy of detention and other consequences of crime

It is widely acknowledged that detention is generally not effective at reducing crime. The Australian Institute of Health and Welfare determined that 50% of children leaving supervised community orders reoffended within twelve months of the order, compared to the 82% of the children leaving detention who reoffended within twelve months.⁴⁸ In fact, the most recent Youth Justice Program acknowledges that evidence demonstrates that detention is not the most effective way to reduce criminalised behaviour for most children.⁴⁹ QIDAN notes the over-criminalisation and over-incarceration of Aboriginal and Torres Strait Islander children. The AIHW found that, in 2022-2023, Aboriginal and Torres Strait Islander people were 28 times more likely to be in detention than non-Indigenous populations.⁵⁰ A recent Cleveland Youth Detention Centre Inspection Report noted that on October 20, 2023, 97% of the 96 children detained were First Nations,⁵¹ a finding corroborated by the professional experiences of YPP advocates.

YPP advocates have observed that clients involved in the criminal justice system appear traumatised both from traumatic adverse childhood experiences (ACE) and from the criminal justice system itself. Research by the Australian Institute of Criminology recently concluded that 88% of children under youth justice supervision report experiencing four or more ACEs,⁵² and 78% of this cohort reoffend within twelve months. Yet, these children continue to face traumatising experiences in detention centres and in watch houses, including prolonged periods of isolation and exposure to violence. With the correlation between trauma experiences and criminalised behaviour, it is essential for all levels of the youth criminal justice system to drastically improve their implementation of trauma-informed practices.

⁴⁸ Australian Institute of Health and Welfare (2019). *Young people returning to sentenced youth justice supervision 2017-18*. [online]. <https://www.aihw.gov.au/reports/youth-justice/young-people-returning-to-youth-justice-1617/summary>

⁴⁹ Queensland Government. *Youth justice strategy 2019-2023*. [online]. p8. https://desbt.qld.gov.au/__data/assets/pdf_file/0022/17149/strategy.pdf

⁵⁰ Australian Institute of Health and Welfare. (2024). *Youth justice in Australia 2022-23*. Retrieved from <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-annual-report-2022-23>

⁵¹ Inspector of Detention Services, Office of the Queensland Ombudsman, *Cleveland Youth Detention Centre inspection report: Focus on separation due to staff shortages*. August 2024

⁵² Australian Institute of Criminology (2022). *Trends & issues in crime and criminal justice*. [online]. Pg 5. https://www.aic.gov.au/sites/default/files/2022-06/ti651_adverse_childhood_experiences_and_trauma_among_young-people.pdf

Often, children in youth detention face intersecting disadvantage and have complex needs that are almost impossible to meet in the detention setting. Incarcerated children experience notably high rates of childhood trauma, poor educational experiences, social and financial disadvantage, and disability.⁵³ Detention settings are inflexible environments, and the use of strict rules and regiment makes detention completely unsuitable for many children with disability, and particularly those with autism spectrum disorder or cognitive disability who require a more individualised approach.

Furthermore, while in detention settings and watch houses, children with disability have considerably less access to, and control over, disability-related support services. We must also emphasise the inappropriateness of detaining children in watch houses. YPP advocates have worked with children with disability who have been held in watch houses for weeks at a time. While in watch houses, children are not provided with any educational materials or activities and appear to have even less access to disability support services. Additionally, children detained in watch houses face significant restrictions around leaving their cell and often are not allowed to leave their cell to socialise, go outside, or engage in activities. One child reported that they were only allowed out of their cell for an hour each day, and they were detained in the watch house for eight days in total. In YPP's experience, some watch houses do not contain basic facilities, such as sinks, toilets, and emergency buttons. Watch houses have no rehabilitative purpose, and children should never be detained in adult detention spaces.

The principles outlined in the youth justice charter emphasise the importance for the youth justice system to safeguard the rights of children, ensure their safety, and promote their physical and mental wellbeing.⁵⁴ Prioritising the protection of children's safety and wellbeing within the youth justice system is crucial for effective rehabilitation. Exposure to violence and abuse can impact interpersonal and community relationships, contribute to problem coping behaviours, and can increase the risk of recidivism.⁵⁵ Despite this, YPP advocates have learned that fights, bullying, and physical assaults occur regularly in detention centres. One child reported that he was intimidated into paying "rent" to other children in custody and would be physically assaulted if he did not provide payment.

Another significant risk of youth detention is lasting stigmatisation. One YPP client, who has been in and out of detention several times, experienced significant barriers to accessing employment. While in the community on a Conditional Release Order, the client applied for approximately thirty jobs per day over a three-month period. However, the client did not receive one job interview during this period and disclosed to his advocates that he felt so discouraged that he "eventually just gave up and went back on the gear", referring to re-engaging in substance misuse. Shortly after, the

⁵³ Australian Institute of Health and Welfare (2022). *Australia's Children: children under youth justice supervision*. [online]. <https://www.aihw.gov.au/reports/children-youth/australias-children/contents/justice-safety/children-youth-justice-supervision>;

⁵⁴ *Queensland Youth Justice Act (2021)*. [online]. Pg 308. <https://www.legislation.qld.gov.au/view/pdf/inforce/2021-09-27/act-1992-044>.

⁵⁵ World Health Organisation (2022). *Violence against children*. [online]. <https://www.who.int/news-room/fact-sheets/detail/violence-against-children>

child was back in youth detention, disclosing that if he had employment he would not have engaged in criminalised behaviour.

There is a marked lack of disability awareness within youth detention settings and watch houses. YPP advocates have observed several situations where disability-related behaviours have been misidentified by youth detention staff as non-compliant behaviour and subsequently met with responses aimed to “maintain order” or as punishment. One of YPP’s clients is regularly segregated in their youth detention cell for long periods of time and becomes dysregulated and distressed during the process. When the child is released from their cell, they often experience meltdowns or engage in behaviours like running or walking around to self-regulate. This behaviour in turn, often leads to the child being placed back in their cell, or in a solitary confinement cell, as a means to “maintain order.”

YPP advocates also note that children with disability are often not provided with reasonable adjustments in the detention setting, which often leads to education disengagement. Advocates have also observed several situations where children are prevented from engaging with disability-related support services. One child, who was known to have experienced a deeply traumatic event, told YPP that his request for counselling was denied because detention centre staff members did not believe that counselling would be of any use. Other children have not been able to engage with services like speech pathology or behavioural supports.

One of QAI’s leading concerns is the overuse of solitary confinement across Queensland youth detention centres and watch houses. The United Nations Standard Minimum Rules for Treatment of Prisoners (Nelson Mandela Rules) define solitary confinement as isolating prisoners, including children, for 22 hours or more daily without meaningful human contact.⁵⁶ Many YPP clients in youth detention have disclosed that they are placed in solitary confinement cells every week, some every second day, and some for up to and over 24 hours at a time. YPP has learned that some solitary confinement cells do not have an emergency call button, a bed, bedding, food, water, or educational material or activities. Some cells used for solitary confinement have a drain in the middle of the room, and advocates have heard that children are forced to use the drain to urinate into because they cannot leave the cell to use a toilet. As such, these cells smell strongly of urine. QAI supports the Inspector of Detention Services’ recommendation that the Queensland Government and the Department of Youth allocate funding to improve the centre’s separation rooms and holding cells, ensuring they are equipped with basic facilities such as a toilet, running water, and a bed or seat⁵⁷ which aligns with Article 28 of the Convention on the Rights of Persons with Disabilities (CRPD).⁵⁸ YPP worked with a child who requested a bed while detained in solitary

⁵⁶ Inspector of Detention Services, Office of the Queensland Ombudsman, *Cleveland Youth Detention Centre inspection report: Focus on separation due to staff shortages*. August 2024

⁵⁷ Ibid.

⁵⁸ UN General Assembly, Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly, A/RES/61/106, 24 January 2007, <https://www.refworld.org/legal/resolution/unga/2007/en/49751> [accessed 03 October 2024]

confinement, and staff moved his mattress from his usual cell onto the floor of the solitary confinement cell. The cell floor was covered in dried urine, and his mattress was soiled. Once released from solitary confinement, the child was forced to return the now soiled mattress to his regular cell where he continued to sleep on it. YPP has also learned that, in some instances, the lights in the solitary cells are not turned off, so children detained overnight have significant issues with sleeping.

Isolating a child with disability in solitary confinement can lead to dysregulation and distress and can be harmful and traumatic. The Australian Children's Commissioners and Guardians warns that detaining children in solitary confinement "constitutes cruel, inhumane or degrading treatment" and can exacerbate underlying health and wellbeing problems.⁵⁹ This concern is reinforced by the Optional Protocol to the Convention Against Torture (OPCAT), which Australia ratified in 2017, underscoring the nation's commitment to safeguarding individuals in detention from such harmful practices.⁶⁰ However, despite this ratification, OPCAT has not yet been fully implemented in Queensland, New South Wales, or Victoria, leaving significant gaps in the protection of vulnerable individuals, especially children in detention.⁶¹ We urge the Federal government to make a sincere commitment to aid in fulfilling State and Territory OPCAT obligations.

The failure to effectively implement OPCAT means that oversight mechanisms designed to prevent inhumane treatment are lacking.⁵⁹ Without these protections, children, particularly those with disability, remain at risk of being subjected to practices such as solitary confinement, which are contrary to international human rights obligations.⁶²

Additionally, the Disability Royal Commission (DRC)'s Recommendation 8.3⁶³ specifically recommends the prohibition of the use of solitary confinement in youth detention centres. The United Nations Committee on the Rights of Persons with Disabilities echoes this sentiment⁶⁴,

⁵⁹ Australian Children's Commissioners and Guardians (2016). *Human rights standards in youth detention facilities in Australia: the use of restraint, disciplinary regimes and other specified practices*. [online]. Pg. 62.

<https://www.childcomm.tas.gov.au/wp-content/uploads/2016/10/report-accg-human-rights-the-use-of-restraint-disciplinary-regimes-and-other-specified-practices.pdf>

⁶⁰ Australian Human Rights Commission (2020). *Implementing OPCAT in Australia (2020)*. [online].

<https://humanrights.gov.au/our-work/rights-and-freedoms/publications/implementing-opcat-australia-2020>

⁶¹ Australian National Preventative Mechanism (2024). *Submission to the Committee against Torture Convention against Torture follow-up procedure: Sixth periodic review of Australia*. [online].

https://www.ombudsman.gov.au/__data/assets/pdf_file/0031/304996/The-Australian-National-Preventive-Mechanism-Convention-against-Torture-follow-up.pdf

⁶² Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). *Criminal justice and people with disability*. [online]. <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%208%2C%20Criminal%20justice%20and%20people%20with%20disability.pdf>

⁶³ Ibid.

⁶⁴ United Nations (2019). *CRPD: Concluding observations on the combined second and third periodic reports in Australia**. [online].

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsnzSGoIKOaUX8SsM2PfxU7sdcBNJQCwIRF9xTca9TaCwj5OIhnsVv2oxnsujKREtaVWFXhEZM%2FOdVJz1UEyF5leK6Ycmqrn8yzTHQCn>

emphasising the urgent need for reforms that protect the rights and dignity of young people in detention and to ensure that their treatment aligns with international human rights standards.



This picture is taken from CCTV footage of a cell used for solitary confinement in Cleveland Youth Detention Centre. The picture shows a drain in the middle of the cell, which clients have disclosed smells of urine. There is no emergency call button, toilet, or bed in the room.

In addition to the use of solitary confinement, advocates report that most of their clients in youth detention have been detained, at some point, in segregated “behavioural units.” YPP are aware that in one of these behavioural units, there was a period where at least 75% of the detainees had disability. The children detained in the behavioural units are separated from the rest of the detention centre and are generally only allowed out of their unit to access education for a couple of hours each day. Subsequently, these children do not have the same access to socialising, schooling, or activities as their peers. Most of YPP clients detained in these units are in custody on remand. Advocates report a lack of clarity around how long a child can be detained in these units, and in some instances, clients have been segregated in the behavioural units for upwards of six months. YPP clients have described feeling isolated, disengaged and alone in these behavioural units.

YPP advocates report that lockdowns (children being detained in their room for over 24 hours at a time) in youth detention centres are taking place across Queensland excessively and unjustifiably. As recently as December 2023, children and staff members in Brisbane Youth Detention Centre and Cleveland Youth Detention Centre reported to YPP that lockdowns occur at least once a week. In Brisbane Youth Detention Centre, lockdowns reportedly occur across the centre every weekend due to staff shortages. During lockdowns, children are not permitted to leave their cells, and can

therefore not engage in any schooling, training, physical activity, or other programs. The frequency of lockdowns significantly impacts rehabilitation opportunities. Concerningly, children have been informed by staff that many of the lockdowns they are subjected to are due to staff shortages. The Disability Royal Commission also notes in its Final Report that detention centres are facilitating an increasing number of lockdowns due to a lack of staff.⁶⁵ QAI supports and echoes the recommendations 8.6 to 8.10 outlined in the Disability Royal Commission final report regarding youth justice in other states; we strongly advocate for their application in Queensland.⁶⁶ These recommendations provide a vital framework for reforming our youth justice system. Detention-wide lockdowns must remain a last resort if used at all, and children should not be collectively punished for a detention centre's poor operational planning.

⁶⁵ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). *Criminal justice and people with disability*. [online]. p.8. <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%208%2C%20Criminal%20justice%20and%20people%20with%20disability.pdf>.

⁶⁶ Queensland Government. (2024). *Queensland government response to the Disability Royal Commission* [online]. Retrieved from https://www.dcsds.qld.gov.au/__data/assets/file/0011/14321/queensland-government-response-disability-royal-commission.pdf.

Case Study – how poor experiences in youth detention can impact a child's future

Jaxon* is a child with disability who was held in a youth detention centre on remand. Jaxon first entered the criminal justice system at the age of thirteen and was subsequently placed on remand in youth detention centres several other times. Jaxon experienced several traumatic events at a very early age and entered the care of Child Safety as a young teenager. He expressed to his advocates that he felt that he was destined to spend the rest of his life in the criminal justice system because he had been institutionalised for so long and it was all that he knows.

For most of Jaxon's time in custody on remand, he was detained in a "behavioural" unit that was segregated from other units and other children. Jaxon explained that the unit detained four children who were only allowed out to socialise with the other children in the youth detention centre for a couple of hours each day. Jaxon reported that he was often "section bound", meaning he wasn't able to leave his section to attend school or training, or participate in sport. Jaxon's segregation prevented him from participating in activities that other children had access to and inhibited meaningful interactions with other children.

During Jaxon's engagement with YPP, his advocates observed his mood became very low, and that he was gradually involved in an increasing number of incidences. His advocates grew concerned that these incidences were largely caused by staff at the detention centre misinterpreting behaviours associated with Jaxon's disability as acts of defiance or non-compliance. Jaxon consistently reported to his advocates that he was being held in a solitary cell after these incidences, sometimes even overnight. At one point in time, he was being placed in a solitary cell every second day. In the solitary cell, Jaxon was not provided with bedding, food or water. During one such incident, Jaxon reported that he got into a physical altercation with a staff member and sustained injuries. He was then forced in a solitary unit without any medical care. When YPP advocates asked if he would like to raise a complaint about the staff member who caused his injuries, Jaxon replied that he didn't see the point in complaining because "staff look after other staff".

Jaxon confided to his advocates that he and the other children in youth detention were subjected to regular extended lockdowns, where they would be held in their cells alone for days at a time. Jaxon and other children were advised by staff that the lockdowns were due to staffing shortages, as there were not enough people working on a given day to appropriately staff the centre.

Jaxon requested repeatedly to see a psychologist but was told by the staff at the youth detention centre that psychologists were "too busy" to see him. YPP advocates also asked his youth workers and child safety officers to connect Jaxon to a mental health practitioner; these requests were also denied. Due to Jaxon's disability, history of childhood trauma, experiences of isolation and segregation, and changes in mood and behaviour, Jaxon should have been prioritised for mental health support. What is more, Jaxon did not have access to other types of support

services for the majority of his time in remand. This includes services like positive behavioural supports.

Jaxon frequently told advocates that his main concern was accessing housing once released. Jaxon had no income or savings, no rental history, and understood how difficult it was to access social housing. Despite his concerns, Jaxon was excited about returning to the community and making a new life for himself. Jaxon's advocates tried to connect him with a transitional program that offered many services including assistance with housing. However, Jaxon's child safety officer insisted that they had already made a referral to the transitional program. Whilst on remand, Jaxon turned eighteen, and shortly after his eighteenth birthday he was released from the detention centre with all charges being dropped. Unfortunately, once released, Jaxon and his advocate learned that his child safety officers had never made the referral to the transitional program and Jaxon quickly became homeless. Neither child safety nor his detention centre youth worker provided Jaxon with a phone. As a result, Jaxon had no way of contacting his loved ones, advocates, or any other services.

Jaxon's advocates tried to reconnect with Jaxon on several occasions after his release, but quickly lost contact as he had no phone or reliable living situation. In their last phone call with Jaxon, advocates learned that he had been staying at friend's place until he was physically assaulted by an intruder who stole his possessions, leading him again to having no place to stay. Advocates tried to contact his child safety officer and youth worker to see what support they could provide to Jaxon, but both services advised that they had ceased all engagement with him. Jaxon's advocates later learned that he had been arrested and was being held in an adult correctional facility.

**Name has been changed to protect identity*

The Efficacy of Enforceable National Minimum Standards for Youth Justice in Accordance with International Obligations

QAI firmly supports the establishment of enforceable National Minimum Standards for Youth Justice, which will lead to best practice in Australia, and promote and protect the rights of children and young people. These standards provide a framework to protect the rights of children and young people as outlined in treaties like the CRC⁶⁷ and CRPD,⁶⁸ improve rehabilitation and reintegration, and reduce recidivism rates. They also ensure accountability for the treatment of youth, promote adherence to best practices, and support evidence-based policies. Additionally,

⁶⁷ United Nations. (1989). *Convention on the Rights of the Child*. Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

⁶⁸ United Nations. (2006). *Convention on the Rights of Persons with Disabilities*. Retrieved from <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

these standards could address the specific needs of marginalised groups, including children with a disability and First Nations children.⁶⁹ By meeting international commitments, Australia can strengthen its reputation as a leader in human rights for young people.

Co-Designed National Minimum Standards

QAI echoes prior submissions which highlight a vital opportunity for co-designed National Minimum Standard for Youth Justice. Queensland Disability Network has developed a Queensland Disability Stakeholder Engagement and Co-Design Strategy which aims to establish a robust, participatory process for lasting disability reform in Queensland.⁷⁰ It focuses on building capability among people with disability, their families, and stakeholders; embedding evidence and accountability in systems; and promoting practice and cultural change to provide more inclusive, accessible, and high-quality services for Queenslanders with disability⁷¹.

QAI urges the adoption of several previous submissions and frameworks, such as "Safe and Supported"⁷² and "Putting Children First,"⁷³ to help shape the framework for national youth justice standards. By integrating these pre-established approaches, a comprehensive and effective framework which prioritises the well-being of children in the justice system can be enforced. Enforceable, co-designed national minimum standards for youth justice are crucial for ensuring justice, accountability, and the protection of rights in line with international commitments.⁷⁴

⁶⁹ Australian Institute of Health and Welfare. (2020). *Youth justice in Australia 2018-19*. Retrieved from <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2018-19>

⁷⁰ Queensland Disability Network, *Queensland disability stakeholder engagement and co-design strategy* (2024), <https://qdn.org.au/wp-content/uploads/2024/09/QLD-Disability-Stakeholder-Engagement-Co-design-Strategy-2024-v3.pdf>.

⁷¹ Ibid.

⁷² Department of Social Services. *National Framework for Protecting Australia's Children 2009–2020*. Australian Government, 2021. Retrieved from https://www.dss.gov.au/sites/default/files/documents/12_2021/dess5016-national-framework-protecting-childrenaccessible.pdf.

⁷³ Save the Children Australia. *Putting Children First: A Rights-Respecting Approach to Youth Justice in Australia*. April 2023. Retrieved from https://www.savethechildren.org.au/getmedia/4befc9d7-c9de-4088-b591-547714fc8673/Putting-children-first-A-rights-respecting-approach-to-youth-justice-in-Australia_April-23.pdf.

⁷⁴ Queensland Government. (2020). *Youth justice strategy 2019-2023*. Retrieved from <https://www.qld.gov.au/youthjustice>

Royal Commission into youth detention across Australia

QAI calls for a Royal Commission into youth detention centres across Australia to address the urgent need for reform highlighted in the recent reports 'Help Way Earlier'⁷⁵ and the 'Cleveland Youth Detention Centre inspection report'.⁷⁶ These reports have exposed significant shortcomings in the current youth justice system, raising concerns surrounding the treatment and conditions experience by young people in detention.

While the 2017 Royal Commission into the Protection and Detention of Children in the Northern Territory resulted in some positive changes, many of its recommendations remain unfulfilled, and significant challenges persist in their implementation.⁷⁷ Moreover, the reforms initiated have not adequately addressed the systemic issues faced by youth detention centres across Australia, highlighting the need for a more comprehensive and coordinated approach to ensure the rights and well-being of children in the justice system.

A comprehensive inquiry is essential to investigate the practices, treatment, conditions and rehabilitation of children in these facilities. Such an inquiry would not only aim to uncover systemic issues but also ensure accountability and transparency in how these facilities operate. Such an inquiry is crucial to assess whether the existing policies and practices align with the best interest of children engaged in the criminal justice system and whether they support their rehabilitation. By conducting a detailed examination of the detention centres, areas for improvement can be identified and evidence-based recommendations that foster a more humane and effective youth justice system in Australia implemented.

Media's influence

The media plays a significant role in shaping public perception and influencing policy youth justice related issues in Australia. Sensationalist coverage often highlights atypical, serious, and high-profile cases. This creates the perception that youth crime is on the rise and becoming increasingly violent, despite data showing that offending rates have been declining in most Australian jurisdictions.⁷⁸ This portrayal amplifies public fear, framing criminalised children as societal threats

⁷⁵ Australian Human Rights Commission. (2024). *'Help way earlier!' How Australia can transform child justice to improve safety and wellbeing*. [online].

https://humanrights.gov.au/sites/default/files/document/publication/1807_help_way_earlier_-_accessible_0.pdf

⁷⁶ Queensland Ombudsman. (2024). *Cleveland Youth Detention Centre inspection report: Focus on separation due to staff shortages*. [online].

<https://www.ombudsman.qld.gov.au/ArticleDocuments/574/IDS%20CYDC%20Inspection%20report%202024%20-%20Focus%20on%20separation%20-%20PUBLIC.PDF.aspx?embed=Y>

⁷⁷ Northern Territory Government. (2017). *Royal Commission into the Protection and Detention of Children in the Northern Territory: Final Report*.

⁷⁸ Save the Children (2023). *Putting children first: A rights respecting approach to youth justice in Australia*. [online]. https://www.savethechildren.org.au/getmedia/4befc9d7-c9de-4088-b591-547714fc8673/Putting-children-first-A-rights-respecting-approach-to-youth-justice-in-Australia_April-23.pdf

and fueling moral panic. Further, marginalised children are disproportionately depicted as offenders, reinforcing harmful stereotypes. The media-driven narrative, focused on punishment rather than rehabilitation, leads to public pressure for stricter penalties, promoting “tough on crime” policies.⁷⁹ An example of this is Queensland’s recent Strengthening Community Safety Act 2023, which overrides the States Human Rights Act 2019, setting aside established national and international rights and protections for children.⁸⁰

Reactive policies shaped by media-induced fear tend to prioritise punishment over rehabilitation, ignore evidence-based solutions, and ultimately cause long-term harm to young people involved in the youth justice system. Such approaches fail to reduce recidivism, improve community safety, or rehabilitate the children involved.⁸¹ Given the media’s powerful influence over public discourse, QAI believes it is crucial to adopt a more balanced approach at the national level. Recommendation 66 of the Atkinson Report offers a viable pathway.⁸² This report calls for a government led coordinated media strategy supporting the Four Pillars: early intervention, keeping children out of court, keeping children out of custody, and reducing reoffending.⁸³ Central to this recommendation is the need to reshape public discourse by reducing sensationalist, fear-driven media narrative and instead promote evidence-based solutions and a more compassionate approach to youth justice.⁸⁴ QAI supports the adoption of this strategy, which is rights based and acknowledges the root causes of crime along with the complex challenges many children involved in the criminal justice system experience.

Systems and processes to provide immediate and ongoing support for victims of crime

People with disability experience victimisation of criminalised behaviour at disproportionately high rates,⁸⁵ and many of the people who have been victimised report negative experiences when they interact with law enforcement.⁸⁶ As we have emphasised throughout this submission, all levels of

⁷⁹ Ibid.

⁸⁰ Queensland Family and Child Commission (2023). *Child Rights Report 2023*. [online]. <https://www.qfcc.qld.gov.au/sites/default/files/2023-08/QFCC%20Child%20Rights%20Report%202023%20%281%29.pdf>

⁸¹ Ibid.

⁸² Atkinson, B (2018). *Report on Youth Justice v2*. Department of Child Safety, Youth and Women. [online]. <https://www.dcssds.qld.gov.au/resources/dcsyw/youth-justice/reform/youth-justice-report.pdf>

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Australian Institute of Health and Welfare (2022). *People with disability in Australia*. [online]. <https://www.aihw.gov.au/reports/disability/people-with-disability-in-australia/contents/justice-and-safety/violence-against-people-with-disability>

⁸⁶ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). *Criminal justice and people with disability*. [online]. <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%208%2C%20Criminal%20justice%20and%20people%20with%20disability.pdf>

the criminal justice system must practice disability awareness in order to prevent further harm. This means that children with disability who have been victimised must be provided with dignity, respect, support, and appropriate reasonable adjustments by law enforcement and judicial system.

It must be acknowledged that the overwhelming majority of people with disability who have interacted with the criminal justice system are themselves victims of criminalised behaviour.⁸⁷ It is essential that we move away from the binary dichotomy between “victims of crime” and “perpetrators of crime.” To keep communities safe and to provide justice to those victimised by criminal behaviour, we must look to the primary prevention and early intervention methods discussed throughout this submission. This includes supporting children with disability to remain engaged in their schooling and connected with their family as much as possible. Furthermore, QAI emphasises the distinction between being tough on crime and being tough on the *causes* of crime, and we urge law enforcement and the judicial system to consider a child’s disability and life experiences when addressing a situation and deciding the appropriate course of action. Providing children engaged in the criminal justice system with necessary supports and reasonable adjustments can reduce recidivism and provide the child and their community the best possibilities for a safe future.

Conclusion

QAI thanks the Senate Legal and Constitutional Affairs Committee for the opportunity to contribute to this inquiry. We are happy to provide further information or clarification of any of the matters raised in this submission upon request.

⁸⁷ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). *Criminal justice and people with disability p.259*. [online]. <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%208%2C%20Criminal%20justice%20and%20people%20with%20disability.pdf>.