



Review of the Experience of Women Across the Criminal Justice System

**Submission by
Queensland Advocacy Incorporated**

To

Women's Safety and Justice Taskforce

12 April 2022

About Queensland Advocacy Incorporated

Queensland Advocacy Incorporated (**QAI**) is an independent, community-based advocacy organisation and community legal service that provides individual and systems advocacy for people with disability. Our mission is to advocate for the protection and advancement of the fundamental 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 is our foundation and guide.

QAI has been engaged in systems advocacy for over thirty years, advocating for change through campaigns directed at attitudinal, law and policy reform. QAI has also supported the development of a range of advocacy initiatives in this state. For over a decade, QAI has provided highly in-demand individual advocacy services. These services are currently provided through our three advocacy practices: the Human Rights Advocacy Practice (which provides legal advocacy in the areas of guardianship and administration, disability discrimination and human rights law and non-legal advocacy support with the Disability Royal Commission and the justice interface); the Mental Health Advocacy Practice (which supports people receiving involuntary treatment for mental illness); and the NDIS Advocacy Practice (which provides support for people challenging decisions of the National Disability Insurance Agency and decision support to access the NDIS). Our individual advocacy experience informs our understanding and prioritisation of systemic advocacy issues. From 1 January 2022, we have been funded by the Queensland Government to establish and co-ordinate the Queensland Disability Advocacy Network (QDAN), which includes operating the Disability Advocacy Pathways Hotline, a centralized phone support for all people with disability in Queensland providing information and referral. We have also been funded to provide advocacy for young people with disability as part of the QDAN network, which we provide in addition to our non-legal education advocacy for Queensland students with disability. Our individual advocacy experience informs our understanding and prioritisation of systemic advocacy issues.

The objects of QAI's constitution are:

- To advocate for the protection and advancement of the needs, rights and lives of people with disability in Queensland;
- To protect and advance human rights including the Convention on the Rights of Persons with Disability;
- To be accountable to the most disadvantaged people with disability in Queensland; and
- To advance the health, social and public wellbeing of disadvantaged people with disability.

QAI's recommendations

QAI recommends:

Expanding the reach and scope of the QAI Justice Support Program by

1. Providing in-person support for people in regional areas;
2. Assisting people with less severe impairment;
3. Provide in person or online training to support workers to include support at Court or at the Police Station as part of the scope of their role, similar to supporting a person to get a haircut or go to the doctor.

Introduction

The Justice Support Program (JSP) at Queensland Advocacy for Inclusion (QAI) advocates for people with a disability who have been charged or are at risk of being charged with a criminal offence, when the person's disability is a contributing factor to the offence.

Essentially a JSP client is likely to have intellectual impairment or a mental illness.

JSP consists of one full time non-legal advocate with in-depth knowledge of the criminal justice system. JSP was never intended to provide legal advice or representation for clients, Legal Aid has a considerable budget to fulfill that role.

These submissions do not specifically address any of the questions posed by Discussion Paper 3, QAI does not differentiate between genders, we advocate for systemic change and individual advocacy to protect and advance the needs, rights and lives of all people with disability in Queensland. However the expansion of the reach and scope of JSP would benefit women and girls with multiple and complex intersecting needs plus support them to reduce recidivism and so benefit the Queensland community.

JSP's work with clients with disability

JSP's first priority is to ensure the client accesses legal advice or representation. This is to ensure the client has equitable access to justice, to ensure that he or she receives the same legal outcome that a person without disability would receive. People whose intellectual impairment prevents them from defending themselves by providing instructions to their lawyer should not be convicted of an offence, any more than a person who did not commit the offence should be convicted.

Once legal representation is arranged JSP can concentrate on trying to identify why the person is offending and what can be done to resolve the problem.

More often than not the offending behaviour is an expression of the person's discontent with the constraints imposed on them by their disability.

It used to be the lack of support they invariably received from Disability Services Qld. Since the implementation of the National Disability Insurance Scheme (NDIS), it may be a lack of support resulting from lack of access or an inadequate NDIS plan, or from being "supported" by a worker who does nothing but watch TV or talk on the phone all day, or their "community access support" is actually a trip to the carpark at the beach to watch the waves then straight back home again.

Another typical scenario is where a parent has been providing full support for decades but is getting older and less vigilant, their support is less effective or they don't have the energy to help their adult son or daughter participate in the events that previously alleviated their monotonous lifestyle. Sometimes having to go through the criminal court process acts as a wakeup call for the client or his support provider.

It's become apparent to JSP that the more severe the client's intellectual impairment the more difficult it is to reassure them that they will not be carted off to jail as soon as they enter the Courthouse. We are unsure as to where this fear originates but it's quite common and very difficult to deal with. The last thing we want is for people with a significant intellectual disability to be too afraid of police to seek help when they need it or believe that they have no rights inside a Courtroom.

In practice JSP helps people apply for Legal Aid, generally via a law firm that has a good criminal law reputation as well as lawyers who are aware of the difficulty a person with intellectual disability has in understanding and participating in the conversations they must have with each other.

JSP has a good working knowledge of the criminal justice process and can assist the lawyer by helping their mutual client understand and cope with the different steps that need to be taken. Typically JSP clients are referred to the Court Liaison Service (CLS) for assessment for fitness for trial, this adds several steps and weeks to the process but is the most effective way to inform the Court of the extent of the defendant's impaired capacity. Even if the CLS have the opinion the defendant is fit for trial they invariably give quite a lot of detail about the defendant's impairment and it's contribution towards the offending behaviour, this is relevant when it's time to enter a plea and be sentenced.

JSP has supported 251 people through the criminal justice process, of these, nine people have reoffended. Four of these had an alcohol or drug addiction combined with mental illness or acquired brain injury and their offences occurred as a direct consequence of their intoxication. Two have severe intellectual impairment and aggressive and unstable behaviour is associated with their diagnosis (Prader-Willi syndrome

and Tuberos Sclerosis). Two have a mental illness as well as severe intellectual impairment. Only one person was basically dishonest, and her borderline intellectual impairment seems to prevent her from gaining insight into her offensive behaviour or its consequences. This 3% recidivism rate for JSP clients compares well with the 33% recidivism rate for defendants before the Queensland Court in 2010-21.¹

Domestic & Family Violence Protection Order matters are not usually within the JSP's scope, except if the respondent lacks capacity to understand the Court process, or the "Aggrieved" is likely to manipulate the respondent into breaching an Order. There does not appear to be any requirement in the current legislation that all parties to an Order understand the nature, purpose and legal implications of an Order. JSP, however has had some success in arranging legal representation for clients so their lawyers can submit that the application should be dismissed on the grounds that a person who is not fit for trial is protected by his or her common law rights.

We note that Legal Aid Qld provides a Youth Legal Advice Hotline where a lawyer is available to advise a young person and negotiate with the Police prior to the young person being charged or cautioned. We assume this service is intended to protect the rights of young people because they may not have capacity to understand what is happening or speak for themselves with Police.

A similar service for people with diagnosed intellectual impairment would similarly protect their rights, particularly since the QPS have expanded the scope of offences that can be dealt with by way of an Adult Caution.

In as late as 2019 an adult caution could not be administered by Police for an offence involving domestic violence, drink driving, an offence against the person e.g. assault, or for an offence involving multiple offenders.

Currently² an adult caution cannot be administered by Police for: a domestic violence offence; driving under the influence; a drug offence; an assault more serious than bodily harm; or where there is an outstanding financial loss to the victim because of the offending.

QAI's recommendations

JSP priority is given to the most vulnerable people who meet JSP criteria, however consideration could be given to expand the reach of the service by:

- (a) Providing in-person support for people in regional areas;
- (b) Assisting people with less severe impairment;
- (c) Provide in person or online training to support workers to include support at Court or at the Police Station as part of the scope of their role, similar to supporting a person to get a haircut or go to the doctor.

Conclusion

QAI thanks the Taskforce 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.

¹ Australian Bureau of Statistics, Recorded Crime – Offenders, 2020-21. Table 16 Offenders, Sex by number of times proceeded against by police, Selected states and territories, 2019–20 to 2020–21. Released at 11.30am (Canberra time) Thurs 10 February 2022.

² OPM Issue 87 Public Edition, Effective 8 April 2022.