



**Women and girls' experience across the
criminal justice system as victims-
survivors of sexual violence and also as
accused persons and offenders**

**Submission to the Women's Safety
and Justice Taskforce**

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About the Office of the Public Guardian

The Office of the Public Guardian (OPG) is an independent statutory office which promotes and protects the rights and interests of adults with impaired decision-making capacity and children and young people in out-of-home care or staying at a visitable site.

OPG provides individual advocacy services to children and young people through the following functions:

- child advocacy, which offers person-centred advocacy for children and young people in the child protection system, and elevates the voice and participation of children and young people in decisions that affect them; and
- child community visiting, which monitors and advocates for the rights of children and young people in the child protection system including out-of-home care (foster and kinship care), or at a visitable site (residential facilities, youth detention centres, authorised mental health services, and disability funded facilities).

OPG also promotes and protects the rights and interests of adults with impaired decision-making capacity for a matter through its guardianship, investigations and adult community visiting and advocacy functions:

- The guardianship function undertakes structured (supported and substitute) decision-making in relation to legal, personal and health care matters, supporting adults to participate in decisions about their life and acknowledging their right to live as a valued member of society.
- The investigation function investigates complaints and allegations that an adult with impaired decision-making capacity is being neglected, exploited or abused or has inappropriate or inadequate decision-making arrangements in place.
- The adult community visiting and advocacy function independently monitors visitable sites (authorised mental health services, community care units, government forensic facilities, disability services and locations where people are receiving NDIS supports, and level 3 accredited residential services), to inquire into the appropriateness of the site and facilitate the identification, escalation and resolution of complaints by or on behalf of adults with impaired decision-making capacity staying at those sites.

When providing services and performing functions in relation to people with impaired decision-making capacity, OPG will support the person to participate and make decisions where possible and consult with the person and take into account their views and wishes to the greatest practicable extent.

The *Public Guardian Act 2014* and *Guardianship and Administration Act 2000* provide for OPG's legislative functions, obligations and powers. The *Powers of Attorney Act 1998* regulates the authority for adults to appoint substitute decision-makers under an advance health directive or an enduring power of attorney.

OPG's role in the criminal justice system

Children and young people

OPG has a key role in promoting and protecting the rights and interests of children and young people in the youth justice system. While there are several levels of oversight of the youth justice system in Queensland, OPG's purpose is to protect the rights and interests of children staying at visitable locations, which includes youth detention. OPG advocates on behalf of relevant children and young people by listening to them, giving them a voice and facilitating the resolution of their concerns and grievances.

OPG operationalises its child advocacy functions through its Child Advocates and the Community Visitor program. Child Advocates at OPG advocate for children who are subject to a range of child protection interventions. In relation to youth justice, they assist youth justice lawyers by advocating for child safety placement and service support options to assist children in relation to bail applications and following release from youth detention. Since mid-2018, OPG's Child Advocates have provided targeted advocacy to ensure issues regarding the child's capacity for criminal responsibility (*doli incapax*) are appropriately explored in court proceedings.

Community Visitors visit children and young people in detention, independently inquire into their physical and emotional wellbeing and advocate for appropriate accommodation and delivery of services. Community Visitors have powers to enter youth detention centres without notice, inspect the site, and require staff members to answer questions and produce documents.

Adults with impaired decision-making capacity

Where the Public Guardian is appointed for an adult with impaired decision-making capacity by the Queensland Civil and Administrative Tribunal (QCAT) to make decisions in their legal matters, OPG promotes and protects the adult's rights and interests if they have contact with the criminal justice system.

Adults with impaired decision-making capacity may have limited understanding of the complexities of the justice system and what is required of them should they be involved with it. They may have little or no understanding of their legal rights and may lack the ability to locate and engage with services that can support them. OPG's advocacy for adult guardianship clients in legal processes is a critical safeguard to ensure vulnerable people's rights are upheld and their legal rights are not restricted because of their disability or impairment.

Guardianship clients can be involved in various areas of law that impact on their rights, such as:

- being vulnerable to charges of criminal offences and being the victim of criminal offences;
- as parents in child protection proceedings; and
- as aggrieved and/or respondents to applications for domestic violence protection orders.

Where QCAT appoints the Public Guardian, OPG will work with the adult to make decisions to progress their legal matters (other than those relating to financial issues). Guardians exercise administrative decision-making for legal matters and do not provide direct legal representation. However, they ensure clients have access to legal advice and representation so that an adult's impairment does not negatively impact their access to justice. Guardians "stand in the shoes" of the adult to provide instructions to legal representatives, if clients are unable to provide instructions themselves.

Position of the Public Guardian

OPG welcomes the opportunity to provide feedback on the Women's Safety and Justice Taskforce's (the Taskforce) *Discussion Paper 3: Women and girls' experience across the criminal justice system as victims-survivors of sexual violence and as accused persons and offenders*. The views of the Public Guardian contained in this submission do not represent the views of the Queensland government.

This submission and its recommendations relate to the experiences of OPG and the people we serve. A summary of the Public Guardian's recommendations appears below.

The Public Guardian recommends:

1. Stronger collaboration between service systems to identify and appropriately respond to the needs of women and girls with cognitive or intellectual disability and address the reasons behind offending behaviour, including examination of a positive behaviour support approach.
2. A focus on preventative strategies and targeted intervention programs and services to address the behaviours of girls and women with a trauma history as an alternative to the youth justice and criminal justice systems.
3. That any early intervention strategies include:
 - youth diversion programs in remote communities developed and operated by, or in partnership with, Aboriginal and Torres Strait Islander communities and/or Aboriginal and Torres Strait Islander controlled organisations; and
 - targeted, culturally appropriate strategies to address the overrepresentation of Aboriginal and Torres Strait Islander children in the youth justice system.
4. The minimum age of criminal responsibility be increased to 14 years of age for all offences.
5. Training for police officers on identifying a person who may be experiencing impaired decision-making capacity when reporting a crime and how to source appropriate support specific to the victim's communication needs.
6. That a review of legal processes and legal training be undertaken to enable the identification of women with undiagnosed disabilities to identify the resources required to support them.
7. That sentencing in the criminal justice system take into account the impacts that a woman's disability may have on their behaviour and capacity for rehabilitation.
8. That sentencing in the criminal justice system take into account the impacts a girl's trauma history may have on their behaviour and capacity for rehabilitation.
9. That a review of legal processes be undertaken with a view to addressing the existing barriers to bail experienced by women with impaired decision-making capacity.

Part 1: Cross-cutting issues

Intersecting experiences of disadvantage and the criminalisation of trauma

Women and girls with disability

Many women and girls with cognitive or intellectual disability have complex support needs and are a particularly vulnerable cohort whose behaviour can expose them to the criminal justice system. These women and girls may exhibit behaviours of concern for several reasons, particularly if their care and support needs are not being met by the people or the service systems on which they rely. It has been the experience of OPG that the resulting behaviours of concern exhibited by these women and girls can be mistakenly attributed with criminal intent, resulting in criminal prosecution when appropriate service system support may have been preventative.

OPG provides services to some girls with neurodevelopmental disorders (often without a formal diagnosis) in detention. These girls may have experienced a failure by multiple systems (including health, education, child protection and justice) to identify and appropriately respond to their support needs before their situation reaches crisis point and the child enters detention. For young girls with complex support needs, these interactions with the justice system can cause lasting damage to their development.

Girls in the child protection system

Similarly, girls in the child protection system are often disadvantaged by traumatic environmental factors related to their upbringing such as child abuse or neglect, homelessness, mental health issues and/or drug and alcohol use, which can lead to them exhibiting criminal behaviour. In OPG's experience, a significant proportion of children within youth detention have a range of prejudicial circumstances that impact on their behaviour. Research from the Australian Institute of Criminology, *Trends and Issues in Crime and Criminal Justice*¹, found that children who came to the attention of statutory child protection services are at least nine times more likely than other children to offend and come under the supervision of youth justice services. The research also found that generally more than half of the children detained in youth justice centres are known to child protection services. This is a concern for girls in particular, with the Australian Institute of Health and Welfare (AIHW) reporting that girls involved in the youth justice system were more likely than males to have received child protection services. While young people under youth justice supervision were almost four times as likely to be male than female (6,206 males compared to 1,698 females), young females were more likely to have also received child protection services in the 5 years to 30 June 2019. During 2018-19, 71% of young females under youth justice supervision had received a child protection service in the 5 years to 30 June 2019 (compared to 49% of young males).²

The Public Guardian encourages the Taskforce to consider the abovementioned report from AIHW for a detailed examination of the trauma experienced by children in the child protection system, which reduces their ability and opportunities to learn and develop empathy. This can then be a precursor to engaging in anti-social or criminal behaviour and early exposure to the youth justice system.

¹ Susan Baidawi and Rosemary Sheehan, '[Crossover kids: Offending by child protection-involved youth](#)' (2019) Australian Institute of Criminology - Trends and Issues in Crime and Criminal Justice.

² Australian Institute of Health and Welfare, '[Young people under youth justice supervision and in child protection 2018-19](#)', 15 Oct 2020 (release date).

OPG holds significant concerns about the continued criminalisation of girls in the child protection system, particularly those who are charged with residential care-based offences and those with significant mental health needs and behaviours. These behaviours continue to result in a police response rather than a therapeutic mental health or disability support response. From OPG's experience, some residential service providers may default to contacting law enforcement to manage a girl's challenging behaviour rather than utilising trauma-informed practices that are appropriate and commensurate to the behaviour. Criminalising the trauma and behavioural manifestations of these children through the justice system creates a vicious cycle of disadvantage and only further isolates and victimises the girls most in need of support and protection. Such early contact with the youth justice system can often lead to a progression to the adult corrections system.

The trauma-based behavioural patterns displayed by girls and young women require specialised and consistent responses, not judgement and punishment.

Alternative approaches

Women and girls with a disability

It is critical that priority be placed on early intervention and stronger collaboration between service systems to identify and appropriately respond to the needs of women and girls with cognitive or intellectual disability, before their behaviour escalates to the point that there is a risk of entering the criminal justice system.

Rather than focusing on punitive measures, the Public Guardian recommends developing strategies and diversionary options that address the reasons why women and girls are committing offences. These include appropriate mental health services and funding for assessment for formal diagnosis of people with intellectual disabilities and acquired brain injury. A decrease in the prevalence of offending could be achieved through investment in preventative strategies, as opposed to punitive measures.

For people living with disability, 'positive behaviour support' is an approach adopted to address challenging behaviours without resorting to a criminal justice response. Positive behaviour support is a way of improving the fit between the person and their environment. It could include changing factors such as staff attitudes and physical factors such as reducing noise levels (sensory) and ensuring increased choice for the person.

Positive behaviour support techniques are typically contained in a tailored Positive Behaviour Support Plan developed by practitioners (eg psychologists, occupational therapists, speech pathologists) who undertake functional behaviour assessments. It is an evidence-based approach and includes:

- Person centred planning, including the identification of the goals, strengths and needs of the person.
- Involving others who live and work with the person, i.e. family members, carers, support workers, and other professionals to contribute to the assessment, planning and implementation process.
- Assessment and intervention comprising a functional behaviour assessment to understand the reason for the behaviour.
- Developing a Positive Behaviour Support Plan (PBSP) by clinical specialists, which details strategies for improving the person's life and addressing any needs. The plan is for both the

person and anyone involved in their life so that everyone can work together. This includes prevention, responding to early warning signs, and reactive strategies.

- Reducing restrictive practices, being the limitations placed on a person to prevent them from harming themselves or others. These practices limit a person's rights or freedom in some way. Positive behaviour support aims to reduce or end the use of restrictive practices. This focuses on quality of life and respect for the person's human rights.
- Skill building; for example, assisting the person to communicate, take part in activities, and avoid using challenging behaviour.
- Staff development, which involves educating and training staff to understand how to put support strategies in place.
- Environment changes encompassing changes to some part of a person's surroundings, such as removing unwanted noise.

Positive behaviour support provides the opportunity to put strategies in place that address potentially problematic behaviours of women and girls with complex needs and the reasons behind them. Positive behaviour support models, and the principles underpinning them, can prevent intervention by a criminal justice system which is not well placed to provide the support required by vulnerable women and girls with complex trauma backgrounds.

Girls in the child protection system

OPG supports the adoption of alternative approaches to address anti-social behaviours displayed by girls as an alternative to a default police response and entry into the youth justice system. These alternative approaches include in-house restorative justice whereby the person has an opportunity to repair and make amends for their behaviour (e.g. participating in the repair of property damage). OPG also sees value in consistent evidence-based de-escalation and co-regulating responses to diffuse problematic behaviour that may be displayed. OPG draws the Taskforce's attention to the Queensland Parliament's Community Support and Services Committee's 2022 [report into Criminal Law \(Raising the Age of Responsibility\) Amendment Bill 2021](#). In their report, the Committee recommended that "... the Queensland Government evaluate the training currently provided to residential care workers to determine whether its residential care workers are given sufficient training in diversionary tactics and de-escalation techniques"³.

Early intervention is also critically important for girls with a trauma history who may be at risk of entering the youth justice system. Prioritising early intervention would support the Government to deliver a youth justice strategy consistent with the four pillars detailed in the Atkinson Report.⁴ Intervention strategies could incorporate parenting programs, access to targeted social services, mental health and disability assessment and services, drug and alcohol services and educational supports that focus on both physiological and brain-based behaviour regulation. This would require government investment in programs outside of the youth justice system, however this investment could ultimately reduce the need for such programs within the youth justice system if children were provided with the tools, resources and support necessary to not engage in criminal activity in the first place. The flow on effects to the child, their family and the community have the potential to be significant.

³ Community Support and Services Committee, *Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021, 2022*, p.17.

⁴ Atkinson, B, *Report on Youth Justice*, 2018. The four pillars identified in the report are, intervene early, keep children out of court, keep children out of custody, and reduce reoffending.

In considering diversion and preventative strategies for girls, the overrepresentation of Aboriginal and Torres Strait Islander children must be addressed. Targeted strategies are urgently required, including cultural competency training to ensure that service delivery is culturally appropriate. In this regard, it is recommended that youth diversion programs in remote communities are developed and operated by, or in partnership with, Aboriginal and Torres Strait Islander communities and/or Aboriginal and Torres Strait Islander controlled organisations. The importance of early intervention was highlighted in another of the recommendations from the above-mentioned Committee report which stated that, “...any alternative proposal to the youth justice system considered by the Queensland Government should include adequate and effective diversion programs and services, including place-based and culturally appropriate practices, to support young people and address factors which lead to offending behaviour”⁵.

The achievement of genuine public safety requires government recognition of the value of investment in early interventions that promote children and young people’s education, health and wellbeing and the prevention of anti-social behaviours that can lead to offending. Considering the over-representation of Aboriginal and Torres Strait Islander children in the youth justice system, such investments for these children are particularly critical.

Recommendation 1

Stronger collaboration between service systems to identify and appropriately respond to the needs of women and girls with cognitive or intellectual disability and address the reasons behind offending behaviour, including examination of a positive behaviour support approach.

Recommendation 2

A focus on preventative strategies and targeted intervention programs and services to address the behaviours of girls and women with a trauma history as an alternative to the youth justice and criminal justice systems.

Recommendation 3

That any early intervention strategies include:

- youth diversion programs in remote communities developed and operated by, or in partnership with, Aboriginal and Torres Strait Islander communities and/or Aboriginal and Torres Strait Islander controlled organisations; and
- targeted, culturally appropriate strategies to address the overrepresentation of Aboriginal and Torres Strait Islander children in the youth justice system.

Age of criminal responsibility

The Public Guardian has consistently advocated for an increase to the minimum age of criminal responsibility in Queensland from 10 to 14 years, which would align with the United Nations Convention on the Rights of the Child *General Comment No.24 (2019) on children’s rights in the child justice system*. As discussed above, early contact with the criminal justice system can increase the chances of re-incarceration. In fact, the AIHW identified that children and young people who were first subject to supervision under the youth justice system due to offending at 10 to 14 years old were more likely to

⁵ Community Support and Services Committee, *Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021, 2022*, p.41.

experience all types of supervision in their later teens (33% compared to 8% for those first supervised at older ages).⁶

Beyond offending itself, it is the experience of OPG that young children lack the capacity to properly engage with the criminal justice system, resulting in a propensity to accept a plea bargain, give false confessions, fail to keep track of court proceedings, or to properly comprehend criminal proceedings.

The Public Guardian submits to the taskforce any proposed reforms to address offending behaviour by girls, particularly those with trauma histories, include a recommended commitment to increase the minimum age of criminal responsibility in Queensland to 14 years of age for all types of offences.

Recommendation 4

The minimum age of criminal responsibility should be increased to 14 years of age for all offences.

Charges for minor offences

OPG is aware of women with impaired decision-making capacity, many of whom have significant mental health conditions, being charged with minor offences such as public nuisance or begging in a public place, as opposed to referring them for social or medical intervention. OPG clients residing as inpatients in mental health wards have also been charged because of violent incidents between co-tenants and/or support staff at their places of residence. OPG's experience is that these charges may not properly consider our clients' impairments and mental health conditions in all instances.

It is also an unfortunate reality that people with impaired decision-making capacity and mental health conditions are more susceptible to attempting suicide. This could be due to a number of factors inherent to their disability or mental health condition, including depression, delusions and impulsivity. However, instead of support and compassion, some OPG clients with multiple and complex needs have been charged with offences such as public nuisance or interference with a railway when they attempt suicide in public. Involvement with the criminal justice system is an inappropriate response to a woman with impaired decision-making capacity and/or mental health condition attempting to take her own life.

Part 2: Women and girls' experience as victims-survivors

Community understanding of sexual offending and barriers to reporting

Barriers to reporting sexual violence

For women experiencing impaired decision-making capacity, physical and verbal limitations, lack of understanding of their rights and a reliance on support systems can result in them being targets for crime, including sexual abuse. This is particularly problematic when a family member or carer is the perpetrator. Women in these circumstances are often reluctant to report abuse due to fear of reprisal from their care-giver. For women with a communication impairment, this fear can be compounded because of an inability to contact police and articulate their experience of sexual violence.

⁶ Australian Institute of Health and Welfare, [Young people under youth justice supervision and in child protection 2018-19](#), 15 Oct 2020 (release date).

OPG is also aware that women with impaired decision-making capacity may not understand that any sexual abuse they are experiencing is wrong and a crime. Accessing information on their rights that is suitable to their communication needs is an obstacle to women, both in terms of recognising that a crime has been committed and how to report it to authorities. While such information may be available, knowing how to access it can be an obstacle to victims who are unsure of their rights.

Lack of housing options

When a perpetrator of sexual violence is a family member or carer, women with impaired decision-making capacity can also experience challenges in obtaining alternative accommodation to allow them to escape their perpetrator and report the violence.

Homeless shelters can be an option of last resort for women who have found themselves without a stable home. However, OPG clients often struggle to find a vacancy in a homeless shelter as staff do not always have the training to support the complex care needs of people with a physical and/or cognitive impairment. This is a particular concern for clients escaping domestic and family violence who have no supports and may have no other option but to return to their abuser. Without available alternative housing options, women with impaired decision-making capacity who have experienced sexual violence may be reluctant to approach police for fear they will have nowhere to live and no one to provide support for their complex needs.

Credibility of women with impaired decision-making capacity

Based on OPG's experience, there is community stigma and lack of police training on the credibility of adults with impaired decision-making capacity as witnesses and a lack of support to have their stories about abuse communicated and believed. This can act as a further deterrent for female victims of sexual abuse to approach police for fear their reports of abuse will not be acknowledged or actioned.

Public reporting on sexual offending and domestic and family violence

OPG refers the Taskforce to our submission to the consultation on *Queensland's legislation governing public access to, and reporting of, sexual offence and domestic and family violence matters* which includes comprehensive discussion on this matter.

Reporting, investigating and charging of sexual offences

Support persons and police training

Girls and women with impaired decision-making capacity

It is critical that girls and women with impaired decision-making capacity be provided with a support person to assist them to communicate any experiences of sexual assault. This requires training by police to be able to firstly identify a woman or girl with impaired decision-making capacity who may need additional support to report sexual violence, coupled with the resources to be able to source the necessary support specific to the victim's communication needs.

Recommendation 5

Training for police officers on identifying a person who may be experiencing impaired decision-making capacity when reporting a crime and how to source appropriate support specific to the victim's communication needs.

Girls in the child protection system

It is common for girls in the child protection system to have acquired a distrust of authority figures given the abuse and/or neglect that has led them to their becoming a child in care. It has been the experience of OPG that this distrust can lead to a reluctance to report experiences of sexual abuse to police based on a fear, real or perceived, that they will not be believed by adults when they make disclosures of abuse. This fear of authority and of not being believed is further compounded when a young victim must face their perpetrator in legal proceedings, despite reported disclosures of sexual abuse. OPG has also observed young victims expressing concern that they themselves will suffer consequences and risk destabilising care arrangements if they are making allegations of abuse against a family member, care provider or another young person placed by Child Safety in the same location.

Legal and court processes for sexual offences

Victims' experiences of the court process

Women with impaired decision-making capacity

Communication difficulties can be an obstacle for OPG clients when providing evidence as a witness in court. OPG has observed a lack of appropriate and available support for persons with impaired capacity to provide evidence in a court setting. This can have a significant impact on their ability to communicate their experiences accurately and confidently.

Girls in the child protection system

Re-traumatisation through court processes for girls in the child protection system is an ongoing issue observed by OPG. These processes, which are often complex and lengthy, require young victims to repeatedly re-count details of the abuse they have endured to several professionals. For girls without the consistent support of a trusted parent or caregiver, these processes can be especially traumatising, particularly when they involve being confronted by the perpetrator and being cross-examined by a defence lawyer regarding the allegations of abuse. Re-traumatisation is exacerbated when legal matters take longer than expected to resolve and, just when a young girl finally begins the process of healing from their trauma, they must relive the abuse when the court processes finally progress.

Part 3: Women and girls' experiences of the criminal justice system as accused persons and offenders

Drivers of women and girls' contact with the criminal justice system

Child protection history and behaviours associated with specific types of disability (such as neurodisability) are strong drivers for women and girls having contact with the criminal justice system. Please refer to the earlier comments in the section of this submission in relation to cross-cutting issues for further discussion (see page 4).

Legal processes for women with impairments and undiagnosed disabilities

In our experience legal processes do not appropriately recognise people with impairments and undiagnosed disabilities. This lack of recognition can have significant consequences on vulnerable women, leading to the criminalisation of those who may otherwise have defences available to them. Such defences are an invaluable safeguard for people with impairments and can act as a pathway out of the criminal justice system.

Inadequate training for legal representatives can lead to issues with identifying or appropriately addressing a women's impairments and consequently exploring possible defences resulting from the same. The rapid pace of a Magistrates Court, and brief engagement with a duty lawyer, is not conducive to identifying or accommodating clients with disabilities.

Further, given the nature of OPG's clients' disabilities and any associated communication barriers, coupled with any cultural/social factors, our clients frequently agree with questions put to them when engaging with legal processes in order to finalise their involvement with the process as quickly as possible. This results in some OPG clients will providing instructions to enter pleas of guilty to offences (both simple and serious), resulting in criminal convictions often carrying serious sentences, when they may otherwise have valid defences available. In OPG's experience this pattern is particularly prevalent within our client base who have complex diagnoses (for example, acquired brain injury, borderline personality disorder), dual diagnoses and/or undiagnosed disabilities (as compared to a mental illness or intellectual disability).

Recommendation 6

That a review of legal processes and legal training be undertaken to enable the identification of women with undiagnosed disabilities to identify the resources required to support them.

Sentencing

Women with impaired decision-making capacity

OPG acknowledges that custodial sentencing can be an effective deterrent measure in Queensland's criminal justice system but are generally not effective for people with impaired decision-making capacity. In OPG's experience providing guardianship services and advocating for women with impaired decision-making capacity, sentences that are imposed by courts do little to deter further offending for this cohort, given that adults with impaired capacity may be unable to control their behaviour and think through potential consequences. Custodial sentences have minimal impact, apart from detaining women with impaired capacity for an extended period in an environment not equipped to address the underlying cause of their anti-social behaviour.

When sentencing, the criminal justice system must take into account a woman's disability and consider how that disability impacts on their behaviour and capacity for rehabilitation. Incarceration will likely have minimal impact on a woman or girl with a cognitive disability when they don't have an understanding of the crime they are alleged to have committed and the reasons behind their behaviour has not been adequately addressed.

Recommendation 7

That sentencing in the criminal justice system must take into account the impacts that a woman's disability may have on their behaviour and capacity for rehabilitation.

Girls in the child protection system

As discussed above in relation to cross-cutting issues (see page 4), girls with a child protection history are often disadvantaged by traumatic environmental factors related to their upbringing such as child abuse or neglect, homelessness, mental health issues and/or drug and alcohol use, which can lead to them exhibiting criminal behaviour. When sentencing girls who have been exposed to the child protection system, the youth justice system must consider the impact of the trauma they have experienced and whether custodial sentence would be of any value as a rehabilitative measure for girls whose behaviour can be linked to their childhood experiences.

Recommendation 8

That sentencing in the criminal justice system must take into account the impacts a girl's trauma history may have on their behaviour and capacity for rehabilitation.

Access to bail

An issue encountered by OPG clients who interact with the criminal justice system is impeded access to bail. OPG has specific concerns about women with impaired decision-making capacity who are on remand in custody with legal proceedings on foot (as opposed to having been sentenced to a term of actual imprisonment). These women, who have not been sentenced for a crime, experience significant difficulties bringing successful applications for bail within a reasonable timeframe.

Delays and barriers to obtaining NDIS funding and/or examinations for functional needs assessments mean these clients are frequently unable to source appropriate accommodation and the relevant supports in a timely manner. As a consequence, these clients have no choice but to serve time in custody, some for lengthy periods, when they are otherwise eligible to apply to be released on bail.

This delay can be further protracted by the interrelationship between service providers when OPG clients are remanded in custody, but already subject to orders made under the *Mental Health Act 2016*, and the Chief Psychiatrist or the client's treating team must authorise or approve the client's bail address or accommodation within the community. Additional delays are also experienced by OPG clients who, while remanded in custody, are charged with further serious offences and a reference of the client's mental state for the charges is filed with the Mental Health Court. These are unnecessary periods of detention that can have a detrimental effect on a woman's wellbeing, their sense of stability and may further compromise their mental health.

Recommendation 9

That a review of legal processes be undertaken with a view to addressing the existing barriers to bail experienced by women with impaired decision-making capacity.

Experiences of incarceration/detention

Girls with cognitive or intellectual disability

OPG has observed that the detention environment itself is not appropriate or adequate to support girls with a cognitive or intellectual disability and can in fact exacerbate symptoms of disability. For example, being held in detention can cause heightened distress to a child with autism, where accentuated behaviours of distress may then be further punished by the system. Girls with cognitive or intellectual disability in detention are also highly vulnerable to abuse and exploitation by others. Their trauma backgrounds have often resulted in a distrust of authority figures and deter these girls from making any allegations to authorities about crimes committed against them whilst in detention, particularly when those crimes are of a sexual nature.

The detention environment is not appropriate or adequate to support these girls or meet their needs where all other service systems have fallen short. The experiences of girls with a cognitive or intellectual disability who are placed in detention highlights again the importance of early intervention and stronger collaboration between service systems to identify and appropriately respond to the needs of girls with cognitive or intellectual disability, before their behaviour escalates to the point that there is a risk of entering the criminal justice system.

Conclusion

OPG looks forward to the taskforce's findings on the improvements that could be made to address women and girls' experiences of sexual violence in the criminal justice system, both as victims and offenders. This submission highlights the experiences of women and girls with trauma histories who are in the criminal justice system and the perspective of women and girls as victims of sexual assault who have impaired decision-making capacity. We are optimistic that the taskforce will recognise the unique needs of these vulnerable women and girls and explore the changes that need to be made to better support them.