Queensland Law Society

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Office of the President

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Dr John Chesterman
Office of the Public Advocate
GPO Box 149,
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By email: [redacted]

Dear Dr Chesterman

Adults with cognitive disability and the criminal justice system in Queensland: Discussion Paper 4 - Detention

Thank you for the opportunity for the Queensland Law Society (**the Society**) to consider and provide input on Discussion Paper 4 (**Paper**). I commend you for undertaking this important project series and for seeking broad and comprehensive engagement on such critical issues.

This submission has been prepared with input from the Society's Human Rights and Public Law Committee.

The Society acknowledges the depth of analysis of key issues in the paper and agrees that the overrepresentation of people with cognitive disability in the criminal justice system reflects broader systemic gaps. These issues often arise well before a person enters custody and continue throughout detention and into the community.

In the Society's view, the current system does not consistently respond to the needs of people with cognitive disability in a way that is fair, proportionate, or effective. In many cases, detention operates as a default response to unmet support needs rather than as a measure of last resort.

The Paper appropriately identifies foundational rights protected under the *Human Rights Act 2019* (Qld) and Australia's obligations under the Convention on the Rights of Persons with Disabilities. It also draws on the findings of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (**Royal Commission**).

Adult correctional institutions are built around security, uniformity and behaviour compliance. These structures can be misaligned with the needs of prisoners with cognitive disability who often require individualised communication approaches, sensory appropriate environments and therapeutic responses to behaviour. However, rigid structures do not always demand rigid practice. While the structural reality of prisons is largely fixed, the application of custodial processes and procedures is not. Even within rigid institutional settings, substantive equality can be promoted through the way corrections staff identify, understand and respond to prisoners' disability related needs.

The findings of the Royal Commission show that this is not always the case in practice. Where disability is not identified early, or where services and programs are not accessible, individuals are placed at a clear disadvantage. Over time, these gaps compound and can lead to longer periods in custody and fewer pathways out.

These issues engage core rights, including equality before the law, humane treatment in detention, and the right to liberty. If systems are not designed to account for cognitive disability, they risk producing outcomes that are technically equal but practically unfair.

The Society considers that reducing the representation of people with cognitive disability in detention should be recognised as an express policy objective. This should be supported by clear measurable goals directed at reducing the proportion of people with cognitive disability in custody and tracking progress over time.

1. Are current cognitive disability screening processes adequate for adults entering detention?

Current cognitive disability screening processes for adults entering detention are not adequate.

Early identification of adults with cognitive disability is the gateway to equality.

Screening practices remain inconsistent across police watchhouses and correctional centres and rely heavily on self-identification. This approach fails to identify individuals with mild, borderline, or undiagnosed cognitive disabilities, despite the significant functional limitations they may experience when navigating the criminal justice system, including in custodial settings.

The findings in the Royal Commission reinforce this concern, highlighting that the failure to identify cognitive disability at the earliest point of contact can lead to systemic disadvantage and progression deeper into the criminal justice system. The Royal Commission emphasised that early identification is critical to enabling reasonable adjustments and appropriate support.

Members have highlighted that at the time of induction into the prison system, many adults do not have pre-existing diagnoses and are not assessed at the time of induction into the prison system. Screening appears to rely largely on self-disclosure to Queensland Health staff, meaning undiagnosed cognitive disability is likely to go unidentified.

Members have also observed that some forms of cognitive impairment, particularly for conditions such as Alzheimer's disease may not be easily identifiable upon entry to the prison system. This is especially the case where individuals present with drug and alcohol dependence, acute withdrawal or mental health issues, which can mask underlying cognitive impairment. In practice, cognitive disability may only become apparent after a period of stabilisation. However, by this stage, opportunities for early support planning may have been missed and it can be more difficult to implement adjustments. Screening frameworks should therefore include not only the initial assessment, but also structured follow-up screening after an appropriate period in custody.

In addition, valuable information contained in pre-sentence reports, forensic psychiatric assessments, and National Disability Insurance Scheme (**NDIS**) documentation is frequently not transferred to Queensland Corrective Services or Queensland Health following sentencing, despite judicial requests in some cases. Prisoners on remand are also impacted, for example where a prior finding of unfitness is not identified at the time of arrest. This failure undermines effective management and support of prisoners with known cognitive disabilities.

Moreover, many Aboriginal and Torres Strait Islander people have an undiagnosed or unidentified disability, and this is attributed by the lack of a culturally validated screening tools to identify disability in these cohorts.

In the absence of standardised, validated screening tools and adequate staff training, individuals continue to enter detention without their disability being recognised. This undermines procedural fairness and contributes to poorer outcomes across all stages of detention. A consistent, mandatory screening framework supported by clinical follow-up and workforce training is necessary to address these deficiencies.

2. Do adults with cognitive disability in detention have appropriate access to disability, mental health and general health services and support?

Adults with cognitive disability in detention often do not have appropriate access to disability, mental health or general services. The Royal Commission demonstrates that detention environments consistently fail to meet basic standards of humane treatment, with inaccessible facilities, lack of interpreters (including Auslan), and significant barriers to healthcare. Disability-specific supports are frequently absent, with prisoners instead forced to rely on other prisoners for day-to-day assistance and support. This creates obvious risks of exploitation, abuse and neglect, particularly for prisoners with cognitive disability. Both the Disability Royal Commission and Human Rights Watch have highlighted the dangers that arise when prisoners with disability are left without appropriate supports and are exposed to violence, harassment and victimisation within custodial settings.

QLS members have reported that people with cognitive disability often struggle to access medication or mental health support, sometimes needing to "yell through the door" to get assistance. There are also unacceptably long waiting times for medical treatment for prisoners to access general health services and support. Recent inspection findings also raise concerns that medical facilities are not fit for purpose, reinforcing the broader inadequacy of health service delivery in detention.[1] Disability-specific supports are frequently absent, forcing individuals to rely on other prisoners, while culturally unsafe practices further disadvantage Aboriginal and Torres Strait Islander adults. These deficiencies contribute to serious harm, including cases where inadequate mental health care has resulted in deaths in custody.[2]

The matter of *Mizner* matter before QCAT and the Queensland Court of Appeal highlights significant and systemic shortcomings in the treatment of adults with cognitive disability in Queensland's prison system.[3]

Ongoing confusion about whether States or the NDIS are responsible for providing supports in detention lead to service gaps and prolonged delays. In addition, transition supports for release which are critical for continuity of care and community reintegration are often not provided or are initiated too late to be effective.

Members have highlighted there are substantial barriers to accessing the NDIS while in custody, including long delays in obtaining diagnoses, reliance on self-funded private assessments, and operational restrictions that limit service delivery within correctional facilities. Members have

[1] Queensland Ombudsman, *Brisbane Correctional Centre Inspection Report* (Report, 2026).
[2] *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) Vol 8.
[3] *Mizner v State of Queensland (Queensland Corrective Services) and Smith* [2022] QCAT 245.

also noted that in their experience, prisoners with autism spectrum disorder are disproportionately impacted, as behaviours arising from their disability may be interpreted as non-compliance. This lack of understanding ultimately results to punitive responses, prolonged placement in maximum security, adverse parole outcomes, and reduced access to rehabilitative opportunities prior to release. [4]

3. How might current rehabilitation, education and training offerings be improved for adults with cognitive disability who are in detention?

Rehabilitation, education and training outcomes for adults with cognitive disability could be improved through earlier and more effective diagnostic screening, improved mental health services, information sharing and better disability-informed care.

Detention systems should adopt culturally safe, trauma-informed and rehabilitative operating models, particularly for Aboriginal and Torres Strait Islander adults to recognise the intersection of disability, trauma, and over-representation in custody.

In addition, policies addressing overcrowding should recognise the disproportionate harm caused to prisoners with cognitive disability when compelled to share cells. Members have noted that is becoming more of an issue with the growing use of double bunking and potential for triple bunking arrangements. Members have also highlighted the need for the implementation of a system-wide identification or alert mechanism to ensure prison officers are aware of prisoners' cognitive disabilities so that they can respond appropriately and consistently.

Overall program design should be improved, including by expanding specialist cognitive disability diversion and rehabilitation programs with demonstrated effectiveness, such as Cognitive Impairment Support Programs and Court Integrated Disability Programs. Rehabilitation, education and training should include integrated literacy and numeracy support, behavioural and positive behaviour supports, therapeutic interventions, and culturally and community-based programming. Programs should be delivered one-on-one using accessible materials, flexible pacing, practical skill-building and supported participation to ensure adults with cognitive disability can meaningfully engage rather than being excluded or set up to fail.

Segregation can have a disproportionately harmful impact on people with intellectual disability. The structural realities mentioned at the outset of this submission make segregation both more likely to be imposed prisoners with cognitive disability and more damaging when it occurs. It is well established that isolation, unpredictability and sensory deprivation can worsen cognitive overload, anxiety and trauma responses. In many cases, behaviour that leads to segregation is itself a manifestation of unmet disability needs. To uphold substantive equality and human rights obligations, segregation must be minimised and disability aware practice must be embedded across custodial operations.

Members have suggested that legislative safeguards should require that segregation for people with disability be used only as a measure of last resort. It should be supported by independent medical approval prior to placement and regular review to authorise continuation.

Finally, support on release should be embedded as a core component of rehabilitation. Transition planning should begin early in detention and include guaranteed, coordinated

[4] Human Rights Watch, *"I Needed Help, Instead I Was Punished"* (Report, 2018). The DRC and Human Rights Watch Both the DRC and HRW have written about the dangers of this.

transition supports.[5] This planning should also include young people with cognitive disability who are transitioning to the adult correctional system, so that support needs are identified early and continuity of services, and case planning is maintained.

Transition planning should not be limited to release at the end of sentence or on parole but must also be provided for people who are released directly from court, including where release occurs unexpectedly or without adequate time for service coordination. This includes continuity of disability, health and community services, as well as the development of appropriate Specialist Disability Accommodation and Supported Independent Living. Without secure disability-appropriate housing and supports, people with cognitive disability may remain in custody solely due to the lack of appropriate housing options, undermining rehabilitation outcomes and increasing the risk of re-incarceration.

4. Is the treatment of adults with cognitive disability who are in detention adequately monitored?

The treatment of adults with cognitive disability in detention is generally not adequately monitored in a manner that reflects their specific needs. While there are oversight mechanisms in place, there can be insufficient record-keeping, including provision (or denial) of disability supports, use of restrictive practices and incidents involving people with disability. This ultimately limits transparency and limits the capacity for systemic accountability.

Adults with cognitive disability are also less likely to engage complaints mechanisms due to communication barriers, lack of support, and limited understanding of their rights. This further diminishes the effectiveness of existing accountability processes.

Adults with cognitive disability are particularly vulnerable to victimisation and may be subject to disciplinary responses for behaviour arising from their disabilities. Without targeted monitoring frameworks and complaints mechanisms, these risks remain unmitigated.

The need for effective monitoring also extends beyond correctional centres. Prisoners who become acutely unwell may be transferred to locked mental health facilities, including The Park. The absence of full Optional Protocol to the Convention against Torture (OPCAT) in locked health settings, creates a further oversight gap that should be remedied.

A more effective approach requires the integration of disability-specific indicators into monitoring frameworks, improved data collection, accessible and supported complaints processes, and strengthened independent oversight that is equipped to identify and respond to the unique vulnerabilities of this cohort.

5. Are specific initiatives required to address the treatment and rehabilitation prospects of First Nations adults with cognitive disability who are in detention?

Aboriginal and Torres Strait Islander peoples are significantly overrepresented in custody, and rates of disability are the highest among this cohort compared to non-indigenous offenders.[6] The intersection of disability, colonisation, systemic disadvantage and over-policing contributes to profound overrepresentation and poorer outcomes. Existing systems often fail to deliver

[5] *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) Vol 8.
[6] *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) Vol 8.

culturally safe and appropriate supports or to recognise the distinct ways that disability may be experiences or identified in First Nations communities.[7]

The Royal Commission highlighted the importance of engaging and consulting with Aboriginal and Torres Strait Island organisations, especially Aboriginal Community Controlled Organisations to provide culturally safe screening and support.[8]

There are significant gaps that continue to drive contact with the criminal justice system including inadequate access to NDIS, lack of stable housing, limited availability of disability trained community corrections officers, and shortage of culturally safe services. Addressing these issues is also central to achieving the Closing the Gap targets, particularly those aimed at reducing over-incarceration, improving access to disability and health services, and strengthening community-controlled service delivery.

Effective reform requires investment in community-led, culturally safe diversion and rehabilitation programs, the inclusion of Aboriginal and Torres Strait Islander perspectives in policy and program design, and the employment of First Nations disability support workers within both custodial and community settings. Without such targeted initiatives, Closing the Gap targets will remain unmet, and Aboriginal and Torres Strait Island adults with cognitive disability will continue to face disproportionate criminalisation and limited access to meaningful rehabilitation.

6. Are current community-based correction order requirements (e.g., Probation, Community Service, Court/Board Ordered Parole) and services suitably adapted for adults with cognitive disability?

Current community-based correction orders and associated services often do not accommodate adults with cognitive disability. The result is high rates of breach and unintentional non-compliance and ultimately undermines the effectiveness of community-based alternatives. In addition, to difficulties with compliance, many people with cognitive disability are also unable to apply for or meaningfully engage with parole, probation and community-based orders without appropriate supports. Without assistance to understand the process, meet procedural requirements and communication supports, they may be excluded from pathways intended to promote diversion and community reintegration.

The Royal Commission identified a lack of reasonable adjustments in community-based responses as a significant driver of ongoing criminal justice involvement for people with cognitive disability, including inflexible conditions and insufficient supports contribute to these rates. Aboriginal and Torres Strait Island adults face intersecting barriers including accessibility due to geographical distance, lack of services and cultural unsafety when engaging with these services. Programs currently exist that have been identified as successful and culturally grounded models, including the Wulgunggo Ngalu Learning Place, the Gallawah program and the Yangah program. However, the availability of programs remains limited and ad hoc across jurisdictions.

A more informed and tailored approach is required, including the adaptation of custodial release conditions to individual capacity, and culturally appropriate community-based programs that

[7] *Royal Commission into Criminal justice and people with disability* (Final Report, September 2023) Vol 9, 33.
[8] Ibid.

integrate disability and justice supports. The Society supports the recommendation that all jurisdictions develop and fund such programs as a core component of reducing overrepresentation and improving rehabilitation outcomes.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on [redacted]

Yours faithfully

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Peter Jolly
President