

Adults with cognitive disability in the Queensland criminal justice system

Discussion Paper 1: Policing

April 2024



Acknowledgement of Country

The Public Advocate and staff acknowledge Aboriginal and Torres Strait Islander peoples as Australia's first peoples and as the Traditional Owners and custodians of the land on which we live. We celebrate the diversity of Aboriginal and Torres Strait Islander cultures across Queensland and pay our respects to Elders past, present and emerging.

Acknowledgement of Lived Experience

We acknowledge the experiential expertise of adults with impaired decision-making ability, whose rights we seek in our work to promote and protect.

Acronyms

AMHS	Authorised Mental Health Service
ATSILS	Aboriginal and Torres Strait Islander Legal Service
BPCC	Brisbane Police Communications Centre
DDAP	Drug Diversion Assessment Program
MHI	Mental Health Intervention (Program)
MOU	Memorandum Of Understanding
OIC	Officer In Charge
OPM	Operational Procedures Manual
QAS	Queensland Ambulance Service
QFTAC	Queensland Fixated Threat Assessment Centre
QMHC	Queensland Mental Health Commission
QPS	Queensland Police Service



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Summary and critical questions

The Public Advocate is undertaking a project on the interactions between adults with cognitive disability and the criminal justice system in Queensland. The aim of this project is to identify opportunities for reform to ensure that the rights of adults with cognitive disability are upheld during these interactions.

This discussion paper is the first in a series of papers that will be used to guide stakeholder consultation.

The focus of the current paper is policing. It aims to provide an overview of issues associated with the interactions between adults with cognitive disability and police, including:

- police responses to mental health and behavioural issues;
- attitudes and stigma;
- the identification and recognition of disability;
- support given during police interviews; and
- police use of force.

The paper also includes a discussion of:

- key policies and legislation relevant to policing in Queensland, including the *Police Powers and Responsibilities Act 2000* (Qld) and the Queensland Police Operational Procedures Manual;
- strategies that have been implemented to improve police interactions with people with cognitive disability;
- some of the key recommendations that have been made, or actioned, following previous studies, inquiries and reports.

The following **key questions** are posed for further discussion:

1. What changes would improve interactions between Queensland Police and adults with cognitive disability?
2. Are reforms required to the *Police Powers and Responsibilities Act 2000* (Qld) and the Queensland Police Operational Procedures Manual to improve the way police interact with adults with cognitive disability?
3. What First Nations policing reforms, and alternatives to policing, should be considered for adults with cognitive disability in Queensland?
4. How can adults with cognitive disability be better supported during police interviews?
5. In what situations involving adults with cognitive disability might alternatives to a policing response be appropriate? What might those alternatives involve?



Introduction

The Public Advocate

The Public Advocate is established under chapter 9 of the *Guardianship and Administration Act 2000* (Qld) to promote and protect the rights and interests of Queensland adults with impaired decision-making ability through systemic advocacy.

Section 209 of the *Guardianship and Administration Act* states that the functions of the Public Advocate are:

- a) promoting and protecting the rights of adults with impaired capacity (the adults) for a matter;
- b) promoting the protection of the adults from neglect, exploitation, or abuse;
- c) encouraging the development of programs to help the adults to reach the greatest practicable degree of autonomy;
- d) promoting the provision of services and facilities for the adults;
- e) monitoring and reviewing the delivery of services and facilities to the adults.¹

Cognitive disability

The term used to describe the people who are the focus of this paper is 'adults with cognitive disability'. Cognitive disability, as the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability has noted, 'arises from the interaction between a person with cognitive impairment and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.'² People may experience cognitive impairment if they have an intellectual disability, acquired brain injury, neurological disorders (such as dementia), or if they have a mental health condition.³

People with cognitive disability may experience difficulty with communication, attention, concentration, memory, thinking, and learning.⁴ Sometimes a person with cognitive disability will have impaired decision-making ability. This may be episodic or temporary for some, requiring intensive supports at specific times, while others may require lifelong support with decision-making and communicating their choices and decisions.

Other terms used in reports, legislation, policies, research and official documents referenced in this paper include; 'people with impaired decision-making ability', 'people with impaired capacity', people with an 'impairment of the mind', 'people with cognitive impairment' or, more broadly, 'people with disability' or 'people with a mental health condition'.

The criminal justice system

The criminal justice system in Australia is complex, with considerable variability evident at Commonwealth, state and territory levels when it comes to the existence of particular criminal offences and the ways that police services and courts deal with alleged breaches of them. Each jurisdiction also differs in terms of enforcement, prosecution and judgement of criminal charges. Given this variability, it is important to note that this paper explores the criminal justice system in Queensland and the issues that arise in this state.

¹ *Guardianship and Administration Act 2000* (Qld) s 209.

² Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Executive summary: Our vision for an inclusive Australia and recommendations*, Final report (2023), p. 316.

³ Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Executive summary: Our vision for an inclusive Australia and recommendations*, Final report (2023), p. 316; DV Jeste, GML Eglit, BW Palmer, JG Martinis, P Blanck, ER Saks, 'Supported decision making in serious mental illness', *Psychiatry*, vol. 81, no. 1, 2018, pp. 28-40.

⁴ Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Executive summary: Our vision for an inclusive Australia and recommendations*, Final report (2023), p. 316.



The criminal justice system in Queensland involves a vast array of people and roles, including the police service, prosecutors, defence lawyers, support groups, the courts, the corrections system, forensic care systems and the parole system.

People with cognitive disability may interact with the criminal justice system for a number of reasons, including as witnesses, as victims of crime, or as those accused of committing a criminal offence. There have been many concerns raised in the past regarding how the criminal justice system interacts with people with disability, including very recently in the work of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission).⁵

In short, people with cognitive disability are overrepresented in the criminal justice system, leading to concerns about the lack of access to justice for people with disability, and about the mainstream criminal justice system's failure to make sufficient accommodations for the needs of people with disability.⁶

These matters are highly relevant to the Public Advocate's systemic advocacy functions in relation to adults with impaired decision-making ability.

Adults with cognitive disability in the Queensland criminal justice system

This project aims to explore the various issues faced by people with cognitive disability in Queensland when they interact with the criminal justice system, and to identify opportunities for reform to ensure that their rights are upheld during these interactions.

The Public Advocate will be seeking feedback from key stakeholders and asking questions focusing on issues relevant to people with cognitive disability.

A series of discussion papers will be developed and used as the basis for consultations. The papers and consultations will explore key elements of a person's potential involvement with the criminal justice system, and will include these topics:

- policing,
- courts,
- detention, and
- victims of crime.

The findings from the consultations will inform the development of a reform recommendations report for consideration by the Queensland government.

Scope of this paper

The focus of this discussion paper is policing.

The first part of this paper provides a brief overview of the key concerns that have been identified in previous reports and research, and publicly available policies and strategies that have been adopted to address identified issues. It also includes a summary of some of the recommendations that have been made, or actioned, with the aim of improving this part of the system for people with cognitive disability.

⁵ Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Overview of responses to the Criminal justice system issues paper* (2020).

⁶ Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Overview of responses to the Criminal justice system issues paper* (2020).



The second part of this paper, attached as an appendix, provides additional details about key policies and legislation that govern police activity in Queensland and help to shape the experiences of people with cognitive disability during their interactions with police. This includes the *Police Powers and Responsibilities Act 2000* (Qld), which provides for the powers and responsibilities of the Queensland Police Service (QPS) in conducting investigations and in enforcing the law, and the Queensland Police Operational Procedures Manual (OPM), which provides a more detailed description of how members of QPS must operate.

This discussion paper refers to 'issue 99' of the OPM, however, it should be noted that the OPM is frequently updated by QPS.

The paper also includes five questions to guide the consultations with stakeholders.



Contact with police

In Queensland, a person's initial contact with the criminal justice system typically involves the QPS.

Adults with cognitive disability may be in contact with the police due to being an alleged offender, victim, or witness to a crime. While processes and experiences related to being a victim of, or witness to, crime will be discussed in a separate discussion paper, it should be noted that these categories are not necessarily distinct, and many people with disability who are offenders have also been victims of crime and violence.⁷ These experiences also shape people's subsequent interactions with the criminal justice system.

In situations where a crime has occurred, QPS is the primary agency responsible for responding to criminal behaviour in the community. It is responsible for initial responses, including the potential arrest and charging of people suspected of committing an offence. Some people may also be placed in a watchhouse under police custody, either prior to or following being charged with an offence. Usually, QPS is also responsible for the prosecution of what are known as summary offences, including public nuisance, trespass, drink driving and speeding.⁸

Increasingly, police are also required to respond to situations where people are experiencing a mental or behavioural health problem or other social issues.⁹ Police are often the first responders to people experiencing a behavioural crisis related to their disability or mental health. They can also conduct welfare checks following a request to do so, which involves an in-person visit to a person's home to check on their safety and wellbeing. Police may also be requested to respond to a missing persons report, for example when a person living in a supported residential setting leaves or does not return, and a staff member contacts the police.¹⁰

Regardless of the reason for the initial contact with police, at this point there is the potential for positive and constructive interventions to occur to ensure that adults with cognitive disability are treated fairly, have equal access to justice, and are diverted away from the criminal justice system and supported to access alternative services where appropriate.

There are examples of good practice by police. However, these interactions are often stressful and challenging for adults with cognitive disability and police, and can lead to detrimental outcomes for all concerned.

The diagram on the following page illustrates some of the triggers leading to police interactions and some of the actions and events that can occur in the aftermath.

⁷ L Dowse, S Rowe, E Baldry and M Baker, *Police responses to people with disability*, research report commissioned by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2021.

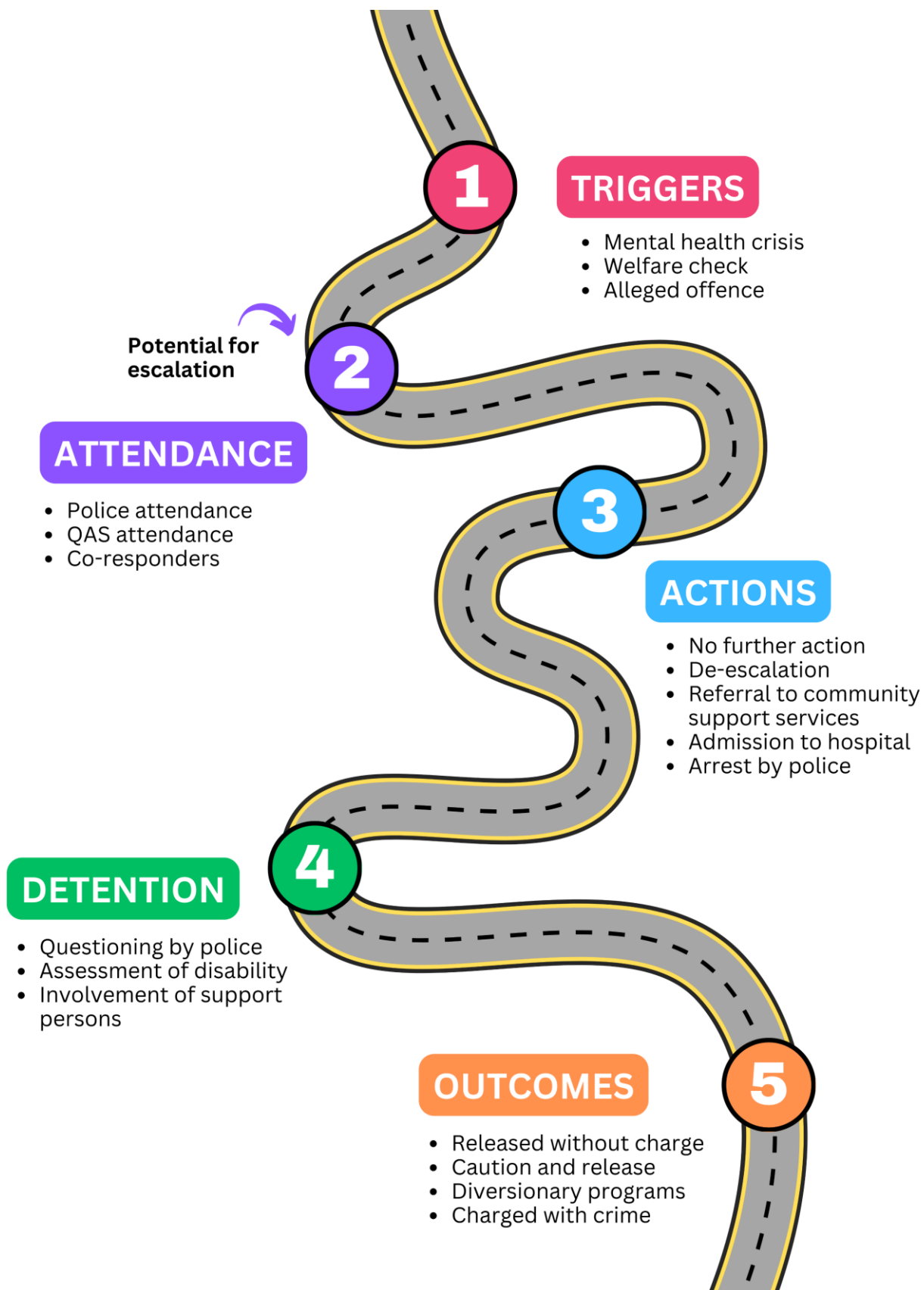
⁸ Queensland Police Service, *Prosecution Contacts (2023)*, <<https://www.police.qld.gov.au/qps-corporate-documents/prosecution-contacts-case-conferencing>>.

⁹ L Dowse, S Rowe, E Baldry and M Baker, *Police responses to people with disability*, research report commissioned by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2021.

¹⁰ L Dowse, S Rowe, E Baldry and M Baker, *Police responses to people with disability*, research report commissioned by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2021.



Summary of a person's potential journey through the criminal justice system: contact with police



Issues and challenges

A number of previous reviews and reports have explored issues associated with interactions between police and people with cognitive disability, including the recent Disability Royal Commission.

For example, a research report commissioned by the Disability Royal Commission and written by researchers from the University of New South Wales reviewed the available literature on police interactions with people with disability and identified key issues, including:

- 'negative assumptions and discriminatory attitudes';¹¹
- 'failure to identify or accept disability';¹²
- 'resistance to engaging mandated supports';¹³ and,
- 'police violence against people with disability'.¹⁴

These issues, and several others, will be described briefly below, along with references to key legislative and policy provisions.

Overrepresentation

It is widely agreed that contact with the criminal justice system, including with police, is more likely to occur for people with cognitive disability.¹⁵

For example, a data linkage study on a cohort of 2,731 people who had been in prison in New South Wales found that:

Having a cognitive impairment predisposes persons who also experience other disadvantageous social circumstances to a greater enmeshment with the [criminal justice system] early in life and persons with cognitive impairment and other disability such as mental health and [alcohol and other drugs] disorders (complex needs) are significantly more likely to have earlier, ongoing and more intense police, juvenile justice, court and corrections episodes and events.¹⁶

The study also found that, of those included in the study cohort, people with cognitive disability had an average of 80 interactions with police, with a median difference of 21 more police interactions than others in the study cohort.¹⁷

Research also indicates that Aboriginal and/or Torres Strait Islander people with cognitive disability or mental health diagnoses experience 'multiple, interlocking and compounding disadvantageous circumstances', and are more likely to have experienced earlier and more frequent contact with police compared to those who do not identify as Aboriginal and/or Torres Strait Islander people.¹⁸

¹¹ L Dowse, S Rowe, E Baldry and M Baker, *Police responses to people with disability*, research report commissioned by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2021, p. 9.

¹² L Dowse, S Rowe, E Baldry and M Baker, *Police responses to people with disability*, research report commissioned by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2021, p. 13.

¹³ L Dowse, S Rowe, E Baldry and M Baker, *Police responses to people with disability*, research report commissioned by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2021, p. 15.

¹⁴ L Dowse, S Rowe, E Baldry and M Baker, *Police responses to people with disability*, research report commissioned by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2021, p. 18.

¹⁵ L Dowse, S Rowe, E Baldry and M Baker, *Police responses to people with disability*, research report commissioned by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2021.

¹⁶ E Baldry, L Dowse and M Clarence, *People with intellectual and other cognitive disability in the criminal justice system*, Sydney: University of New South Wales, 2012, p. 4.

¹⁷ E Baldry, L Dowse and M Clarence, *People with intellectual and other cognitive disability in the criminal justice system*, Sydney: University of New South Wales, 2012, p. 16.

¹⁸ E Baldry, R McCausland, L Dowse and E McEntyre, *A predictable and preventable path: Aboriginal people with mental and cognitive disabilities in the criminal justice system*, UNSW, Sydney, 2015, p. 10.



However, there is limited data about adults with cognitive disability in the criminal justice system in Queensland, and very little recent data available on the extent of their interactions with police, including the frequency or type of interactions.¹⁹

As an interaction with police is typically a person's first point of contact with the criminal justice system, further information about the types and frequency of police interactions with people with cognitive disability in Queensland could enable improved interventions at this early stage.

Police responses to disability and mental health

As noted above, as part of their role in supporting community safety, police are often called to respond to situations where there has been no crime, but where an individual is experiencing a mental health or behavioural issue.

In these situations, some people with cognitive disability may perceive a police response as intimidating or threatening. For example, the sound of sirens, the presence of police dogs, and the nature of the interaction with police can create further distress.

If a person with cognitive disability displays communication or behavioural problems related to their disability or condition, this can create further challenges during their interactions with police. Police may misinterpret behaviours associated with a person's disability as aggressive or non-compliant with instructions, and respond in a way that further escalates the situation.²⁰ The knowledge, attitudes, and skills of police in identifying cognitive disability and mental ill health, and responding appropriately in these situations, also significantly shape these interactions (as discussed below).

As a result of these challenges, police responses can often serve to escalate rather than de-escalate a situation. There are numerous examples of situations that have escalated to the point of the person with a cognitive disability or mental health concern being arrested, charged with a crime, or seriously injured or killed during these interactions.²¹ In this way, police responses to a person in distress or crisis related to their disability or mental health, instead of being supportive or therapeutic, can result in tragic consequences.

Questions have been raised as to whether police are the most appropriate service to respond to many of these situations,²² and whether a health or social service response would be more appropriate.

Sometimes the lack of appropriate health and social service responses, particularly outside of usual business hours, limits opportunities to prevent or ameliorate a fragile situation.

In its final report, the Disability Royal Commission describes how cumulative disadvantage contributes to people with cognitive and psychosocial disability becoming involved with the criminal justice system.²³ It notes how certain attributes or behaviours of people with disability can draw the attention of police or others working in the criminal justice system, how interactions with police can quickly escalate, and how a lack of appropriate support can 'draw people with cognitive disability into the criminal justice system and then enmesh them'.²⁴

¹⁹ L Dowse, S Rowe, E Baldry and M Baker, *Police responses to people with disability*, research report commissioned by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2021.

²⁰ L Dowse, S Rowe, E Baldry and M Baker, *Police responses to people with disability*, research report commissioned by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2021.

²¹ C Atfield, 'Surge in Qld police shootings 'concerning', says police chief', *Brisbane Times*, 6 August 2023, <<https://www.brisbanetimes.com.au/national/queensland/surge-in-qld-police-shootings-concerning-says-police-chief-20230806-p5duak.html>>.

²² L Dowse, S Rowe, E Baldry and M Baker, *Police responses to people with disability*, research report commissioned by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2021.

²³ Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Criminal justice and people with disability*, Final report, Volume 8 (2023).

²⁴ Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Criminal justice and people with disability*, Final report, Volume 8 (2023), p. 40.



Difficulty understanding the criminal justice system can also create challenges for people with cognitive disability. As an example, the Public Advocate has recently been informed of a situation where a person with a cognitive disability breached a Domestic and Family Violence Order in contacting a person about a shared pet that was unwell, as they did not understand the order, and its consequent restrictions on their behaviour.

Attitudes and stigma

It has been reported that some police officers hold negative attitudes about people with disability that affect their access to justice and their experiences of engaging with police. For example, there are concerns that some police may view people with disability as unreliable or lacking credibility.²⁵

This disadvantage can be further exacerbated by communication challenges and misunderstandings of police procedures.

The criminal justice system experiences and outcomes for Aboriginal and Torres Strait Islander people with cognitive disability and mental health diagnoses are also negatively impacted by stigma, discrimination and institutional racism.²⁶

Identification and recognition of disability

Identification of disability or mental health concerns is critical to people being afforded their rights and receiving appropriate supports during their interactions with police.

The *Police Powers and Responsibilities Act* includes a number of provisions that outline the requirements of police when they are working with people with 'impaired capacity', particularly relating to detaining or questioning a person, conducting forensic procedures, and searching a person (see page 24 for further information).²⁷

The OPM also outlines actions that must be taken by police when interacting with people who are 'vulnerable, disabled or have cultural needs'.²⁸

However, it is reported that police often fail to identify when a person has a disability.²⁹

Determination of whether a person is 'vulnerable' is left to individual officers, who must evaluate 'the ability of the person, to look after or manage their own interests'³⁰ and consider:

whether the person is capable of understanding the questions posed, or capable of effectively communicating answers. The person must be capable of understanding what is happening to them and be fully aware of the reasons why the questions are being asked by the officer. The officer must finally establish if the person is fully aware of the consequences which may result from questioning and be capable of understanding their rights at law.³¹

Additional factors that officers must take into consideration during this evaluation, as outlined in the OPM, are described further on page 30.

²⁵ L Dowse, S Rowe, E Baldry and M Baker, *Police responses to people with disability*, research report commissioned by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2021.

²⁶ E Baldry, R McCausland, L Dowse and E McEntyre, *A predictable and preventable path: Aboriginal people with mental and cognitive disabilities in the criminal justice system*, UNSW, Sydney, 2015.

²⁷ *Police Powers and Responsibilities Act 2000 (Qld)* s 422, 452, 480, 631.

²⁸ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6 Persons who are vulnerable, disabled or have cultural needs.

²⁹ L Dowse, S Rowe, E Baldry and M Baker, *Police responses to people with disability*, research report commissioned by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2021.

³⁰ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.3.2 Establishing whether a person is vulnerable, disabled or has a cultural need.

³¹ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.3.2 Establishing whether a person is vulnerable, disabled or has a cultural need.



It has also been reported that police may have difficulty distinguishing between types of cognitive disability, including intellectual disability, psychosocial disability and acquired brain injury.³²

Access to a support person

In Queensland, police must not question a person they 'reasonably suspect' has 'impaired capacity', unless they have allowed the person to speak to a support person in private and a support person is present while the person is being questioned.³³ If, while questioning a person, it 'becomes apparent that the person being questioned is a person with impaired capacity', police must suspend the questioning and allow the person to access a support person.³⁴ (See page 24 for further details about the requirements for detaining or questioning a person under the *Police Powers and Responsibilities Act*).

People with cognitive impairment are also afforded the safeguards that are available to all people, including the right to speak to a lawyer, friend or relative, the right to have a lawyer or support person present during questioning, the duty on police to provide reasonable facilities to enable the person to speak to these people, and the prohibition on obtaining confessions through threats or promises.³⁵

However, people with impaired decision-making ability may not always be able to access these supports. As noted above, police may fail to identify when a person has a disability, and therefore do not offer them the required supports. In some situations, where a person has been identified as having a disability, or potentially having a disability, these supports may not be provided due to perceptions that the efforts and resources to make processes more accessible exceed the perceived value of those supports.³⁶ Many people with disability may not be aware of their rights and therefore do not request access to the supports to which they are entitled.

Police use of force

Police use of force has been discussed in a number of previous reports that consider interactions between people with cognitive disability and the police.

While there is limited data available in Australia, people with disability and mental health concerns are likely to be 'over-represented in incidents involving both fatal and non-fatal police violence'.³⁷

A Victorian study of the use of force by police resulting in fatality found that the rates of mental health diagnoses including psychosis and schizophrenia were significantly overrepresented in these cases compared to rates in the general population.³⁸

A recent report from the Law Enforcement Conduct Commission in New South Wales reviewed 'critical incidents', which can be declared when death or serious injury arise from the use of force, the use of a police vehicle, the discharge of a firearm by a police officer, or that occur while a person is in police custody, or that result from any police operation.³⁹ The review found that 43% of critical incidents declared in the past five years involved a person experiencing a mental health crisis.⁴⁰

³² Australian Human Rights Commission, *Equal before the law: Towards disability justice strategies*, 2014.

³³ *Police Powers and Responsibilities Act 2000* (Qld) s 422.

³⁴ *Police Powers and Responsibilities Act 2000* (Qld) s 422.

³⁵ *Police Powers and Responsibilities Act 2000* (Qld) ss 416-420.

³⁶ Australian Human Rights Commission, *Equal before the law: Towards disability justice strategies*, 2014, p. 19.

³⁷ L Dowse, S Rowe, E Baldry and M Baker, *Police responses to people with disability*, research report commissioned by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2021, p. 19.

³⁸ D Kesic, S Thomas and J Ogloff. 'Mental illness among police fatalities in Victoria 1982-2007: Case linkage study', *Australian & New Zealand Journal of Psychiatry*, vol. 44, no. 5, 2010, pp. 463-468.

³⁹ Law Enforcement Conduct Commission, *Five Years (2017 – 2022) of independent monitoring of NSW Police Force critical incident investigations*, 2023.

⁴⁰ Law Enforcement Conduct Commission, *Five Years (2017 – 2022) of independent monitoring of NSW Police Force critical incident investigations*, 2023, p. 41.



People with cognitive disability and mental health concerns may also be more vulnerable to police misconduct, and more likely to experience difficulties in reporting their concerns.⁴¹

The OPM provides direction about police use of force, including guidance on the types of force that may be used, how to determine what kind of force should be used, and in which situations it may be used.⁴²

The OPM also includes information regarding the management of what is referred to as 'excited delirium', which it notes includes acute psychostimulant-induced and acute psychotic episodes (further details are provided on page 36 of this paper).⁴³ As noted in the OPM:

Where a person progresses to an excited delirium episode whilst suffering from a hyperthermic (feverish/high body temperature) condition, the person can suddenly succumb to respiratory or cardiac arrest. Without immediate medical intervention death may follow within a matter of minutes.⁴⁴

There is some controversy surrounding the use of the term 'excited delirium', with much of the existing research and commentary coming from overseas, including the USA. In particular, there are concerns that 'excited delirium' does not reflect an accepted medical or evidence-based diagnosis, that its use may obscure the use of force, and that use of this diagnosis has been linked to bias and racism.⁴⁵

⁴¹ L Dowse, S Rowe, E Baldry and M Baker, *Police responses to people with disability*, research report commissioned by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2021; Independent Broad-based Anti-corruption Commission Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria* (2018), 155.

⁴² Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 14.3 Use of force.

⁴³ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 14.3.6 Acute psychostimulant-induced episode and excited delirium.

⁴⁴ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 14.3.6 Acute psychostimulant-induced episode and excited delirium.

⁴⁵ See for example: R Kurmelovs, 'Excited delirium': How a disputed US term found its way into Australian deaths-in-custody inquests, *The Guardian*, 4 July 2021; PS Appelbaum, 'Excited delirium, ketamine, and deaths in police custody', *Psychiatric services*, vol. 77, no. 7, 2022, pp. 827-829.



Current strategies and programs

A number of strategies and approaches have been developed and implemented in Queensland that are relevant to the interactions between people with cognitive disability and police.

QPS has been consulted during the development of this discussion paper, including consultation on the current approaches adopted by QPS to improve interactions between police and people with cognitive disability described below. QPS also provided the following statement:

The Queensland Police Service is committed to improving responses to adults with cognitive disability and vulnerable persons in general. The Queensland Police Service looks forward to working with the Public Advocate to review the interactions of these members of the community as they interact with the criminal justice system as offenders, victims and witnesses.⁴⁶

QPS policies and strategies

Disability Service Plan

The *Disability Services Act 2006* (Qld) requires all Queensland Government departments to develop and implement disability service plans that identify service delivery issues for people with disability and how they will be addressed.⁴⁷

The QPS Disability Service Plan 2023-2026 outlines a number of actions that will be taken to 'ensure fairness and inclusion in the delivery of [its] services and within [the] organisation'.⁴⁸ These actions include:

- providing disability training to employees;
- reviewing policies relating to communication supports for people with disability who come into contact with police;
- reviewing the QPS referral systems;
- reviewing the accessibility of forms and documents; and
- reviewing the data collected in relation to people with disability to identify opportunities for improvement.⁴⁹

The plan was co-designed with people with lived experience of disability, including people internal and external to the QPS.

QPS Mental Health Strategy

The QPS Mental Health Strategy 2023-27 describes how QPS aims to respond to people who are experiencing, or are impacted by people who are experiencing, mental health crises in the community.

Key objectives included in the strategy include:

- 'Enhance community safety by preventing victimisation of people experiencing mental health crisis';
- 'Maximise relationships with community, government, and sector partners to strengthen effective police responses to vulnerable persons in crisis, trauma and distress'; and
- 'Increase response capability through technology, improved models of service delivery, continuous learning, digital transformation, and the provision of best practice integrated de-escalation training for frontline staff'.⁵⁰

⁴⁶ Letter from Steve Gollschewski, Acting Commissioner, Queensland Police Service to John Chesterman, Queensland Public Advocate, 2 April 2024.

⁴⁷ *Disability Services Act 2006* (Qld) s 221.

⁴⁸ Queensland Police Service, *Disability Service Plan 2023-26*.

⁴⁹ Queensland Police Service, *Disability Service Plan 2023-26*.

⁵⁰ Queensland Police Service, *Mental Health Response Strategy 2023-27, 2023*.



The QPS Domestic, Family Violence and Vulnerable Persons Command

The Domestic, Family Violence and Vulnerable Persons Command was established in March 2021 to drive the implementation of QPS reforms to support the capacity of the service to respond to vulnerable people.⁵¹ The Command is also a key point of contact and collaboration with a range of government and non-government stakeholders on matters relating to domestic and family violence and vulnerable people.

However, the Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence report noted that the Command is:

'inadequately resourced to deliver on its stated intent. Because of this, it tends to have a reactive approach, with a limited ability to effectively plan and implement its initiatives.'⁵²

Co-responder program

To support improved responses to people experiencing a mental health crisis, co-responder programs have been implemented in a number of areas across Queensland. These programs see mental health professionals partner with ambulance and police officers to enhance engagement with people experiencing acute mental distress and, where appropriate, support diversion away from hospitals and the criminal justice system.

An evaluation of the co-responder program in the West Moreton region indicated that the program can assist in resolving an immediate crisis and help to prevent presentation of a person to an emergency department or inpatient treatment in the two weeks following the intervention.⁵³ The Public Advocate has also been advised by stakeholders that key benefits of the program include the ability to provide mental health interventions in a person's home, and a health-based response as a first response for people in crisis.⁵⁴

In a report titled: *Better Pathways: Improving Queensland's Delivery of Acute Mental Health Services*, the Public Advocate recommended that 'The Queensland Government should extend the co-responder program, in a format that is appropriate to each particular region, so that it is available to all Queenslanders.'⁵⁵ This was consistent with recommendations from the Inquiry into the Opportunities to Improve Mental Health Outcomes for Queenslanders conducted by the Queensland Parliament Mental Health Select Committee.⁵⁶

Mental Health Intervention Program

Under the Mental Health Intervention (MHI) program, first response officers receive training in tactical communication skills to support the de-escalation of mental health incidents.⁵⁷ The MHI program also involves the appointment of Mental Health Intervention Coordinators to facilitate communication, information sharing, and responses to mental health incidents. For further information about the QPS requirements related to this program, as included in the OPM, see page 35.

⁵¹ Queensland Police Service, *Domestic, Family Violence and Vulnerable Persons Command* (3 November 2023), <<https://www.police.qld.gov.au/organisational-structure/domestic-family-violence-and-vulnerable-persons-command>>.

⁵² Commission of Inquiry into Queensland Police Service responses to domestic and family violence, *A call for change*, 2022, p. 15.

⁵³ T Meehan, J Brack, Y Mansfield and T Stedman, 'Do police-mental health co-responder programmes reduce emergency department presentations or simply delay the inevitable?', *Australian Psychiatry*, vol. 27, no. 1, 2019, pp.18-20.

⁵⁴ Public Advocate (Qld), *Better pathways: Improving Queensland's delivery of acute mental health services*, 2022.

⁵⁵ Public Advocate (Qld), *Better pathways: Improving Queensland's delivery of acute mental health services*, 2022, p. 2.

⁵⁶ Mental Health Select Committee, Queensland Parliament, *Inquiry into the opportunities to improve mental health outcomes for Queenslanders*, Report no. 1, 57th Parliament, (2022), 121.

⁵⁷ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.6.13 Mental health intervention coordination and training.



Police Communications Centre Mental Health Liaison Service

The Police Communications Centre Mental Health Liaison Service was established in 2015 to address identified gaps in information sharing and support for police responses to mental health crises.⁵⁸ This consultation liaison service sees mental health clinicians embedded within the Brisbane Police Communications Centre (BPCC) outside of business hours. Regional QPS communication centres can also access this service through the BPCC. Functions of the service include to 'interpret relevant clinical information and provide this in a way in which it is useful for immediate use by QPS' and 'provide linkages with local mental health services through early referrals and notifications of potential presentations and liaison regarding existing clients'.⁵⁹ It also works with QPS and mental health services to identify opportunities to improve outcomes for clients.

Queensland Fixated Threat Assessment Centre

The Queensland Fixated Threat Assessment Centre (QFTAC) was established in 2013 as a joint initiative of QPS and the Queensland Forensic Mental Health Service.⁶⁰ The QFTAC was initially focused on fixated threats to public figures, but was expanded to include lone actor grievance-fuelled violence.⁶¹

The model involves assessment of the risk posed by an individual and the application of interventions to reduce this risk, including linking the individual with mental health and other interventions as required.⁶²

Police training

New recruits undergo an eight-month training course at the Queensland Police Service Academy.⁶³ People with prior policing experience may complete the Police Abridged Competency Education Program, which is 18 weeks in duration. Those who successfully complete training then become part of the First Year Constable program, which involves on-the-job training and development.⁶⁴

In a progress report for the Queensland Mental Health Commission's (QMHC) project on 'Improving Outcomes from Police Interactions' published in 2019, QPS noted that officers are required to undertake annual training, and that training is 'strongly focused on managing mental health interventions and behavioural disturbances'.⁶⁵ It also notes that the development and delivery of training uses a co-design approach that 'incorporates information from people with lived experience, non-government and government agencies'.⁶⁶

⁵⁸ Queensland Forensic Mental Health Service, *Police Communications Centre Mental Health Liaison Service: Evaluation report*, 2016.

⁵⁹ Queensland Forensic Mental Health Service, *Police Communications Centre Mental Health Liaison Service: Evaluation report*, 2016, p. 15.

⁶⁰ Queensland Forensic Mental Health Service, *Police Communications Centre Mental Health Liaison Service: Evaluation report*, 2016.

⁶¹ The State of Queensland, *Queensland Police Service Annual Report 2018-19*, <<https://www.police.qld.gov.au/sites/default/files/2019-09/FINAL%20QPS%20AR%202018-19.pdf>>; A Seaward, Z Marchment and P Gill, *A directory of threat assessment models*, <https://www.unomaha.edu/ncite/_files/threat-assessment-directory.pdf>.

⁶² Queensland Forensic Mental Health Service, *Police Communications Centre Mental Health Liaison Service: Evaluation report*, 2016.

⁶³ Queensland Police Service, *Frequently asked questions, Academy and Training*, <<https://www.policerecruit.qld.gov.au/frequently-asked-questions>>.

⁶⁴ Queensland Police Service, *Frequently asked questions, On the Job*, <<https://www.policerecruit.qld.gov.au/frequently-asked-questions>>.

⁶⁵ Queensland Mental Health Commission, *Improving outcomes from police interactions (a systemic approach), Final progress report*, 2019, p. 9.

⁶⁶ Queensland Mental Health Commission, *Improving outcomes from police interactions (a systemic approach), Final progress report*, 2019, p. 9.



Diversion and referrals

Police have some discretionary powers that can enable diversion away from the criminal justice system for suspected and accused offenders. For example, in some situations they may issue a 'caution' instead of commencing criminal proceedings (see page 38 for further information).⁶⁷ For a minor drug offence, police are required to offer eligible people an opportunity to participate in a drug diversion assessment program (see page 39 for further information).⁶⁸ Police can also make referrals to Adult Restorative Justice Conferencing, which involves a facilitated meeting between the person who caused the harm and the person or people who have been affected (see page 40 for further information).⁶⁹

The Police Referrals service, which was established in Queensland in 2015, also provides an opportunity for police to refer people with disability to other support services, potentially diverting them away from the criminal justice system.⁷⁰ The Police Referral Service enables referrals to over 500 service providers across Queensland, including services for community support, domestic violence, health and wellbeing, seniors, legal assistance, and mental health, amongst other services.⁷¹

By accessing these services where required, people with cognitive disability may be supported to avoid or reduce future contact with police and the criminal justice system.

In the course of conducting research for a report on the acute mental health system in Queensland, the Public Advocate was advised that the police referrals service no longer includes a state-wide mental health support provider due to a loss of funding by the provider and challenges with managing the volume of work.⁷² He was also advised that referrals to mental health services were limited by the lack of availability and lack of capacity of community-based services, particularly in rural and remote areas.

Intervention Plans

Police Advice Intervention Plans (previously known as Police and Ambulance Intervention Plans) provide information that QPS can use to assist in responding to mental health-related incidents in the community.⁷³ These plans are developed by a mental health clinician, ideally in collaboration with the consumer.

Other initiatives

QPS has advised that a resource is available to frontline staff that provides access to internally and externally developed resources to support the delivery of services to people with disability.

The Runaway Bay Police Station will also become the first police station in Queensland and Australia to be recognised by Dementia Australia's Dementia-Friendly Communities Program as working towards becoming dementia-friendly.

⁶⁷ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 3.2 Cautioning adults.

⁶⁸ *Police Powers and Responsibilities Act 2000* (Qld) s 379.

⁶⁹ The State of Queensland, *About adult restorative justice conferencing* (15 June 2018), <<https://www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/settling-disputes-out-of-court/restorative-justice/about>>.

⁷⁰ Queensland Police Service and The Redbourne Group, *Queensland Police Referral Service*, <<https://policereferrals.org.au/about/overview/>>.

⁷¹ Queensland Police Service, *Police Referrals* (18 January 2024), <<https://www.police.qld.gov.au/police-and-the-community/police-referrals>>.

⁷² Public Advocate (Qld), *Better pathways: Improving Queensland's delivery of acute mental health services*, 2022, p. 23.

⁷³ Queensland Police Service, Submission no. 082 to the Queensland Parliament Mental Health Select Committee, *Inquiry into the opportunities to improve mental health outcomes for Queenslanders*, 2022.



Previous recommendations and opportunities for improvement

Many of the reports and reviews that have explored policing, including interactions between police and people with cognitive disability or mental health concerns, have made targeted improvement recommendations. Some of these recommendations have been implemented, however, for some recommendations, the extent to which they have been implemented and the effectiveness of the changes made are not always clear.

Some of the key areas for proposed reform that have been identified in these reports and reviews are summarised briefly below, along with examples of some of the recommendations that have been made.

Integration with other systems

A number of previous reports have made recommendations related to improving information sharing and communication between QPS and other relevant agencies.⁷⁴ There has been a particular focus on improving responses to people with mental health concerns through improved communication with Queensland Health and the QAS.

This area has also included recommendations to further develop and expand the co-responder program⁷⁵ and to review or revitalise the MHI Program.⁷⁶

According to the QPS 2021-22 annual report, work is underway to evaluate the co-responder model and implement recommendations from a review of the MHI Program.⁷⁷

Support for people with cognitive disability or mental health concerns

Previous reports have also highlighted opportunities to improve the supports available to people with cognitive disability and/or mental health concerns who are engaging with police.

As noted above, in Queensland, people with cognitive disability who are being questioned by police are able to nominate a support person, who can include a relative or friend. However, there are programs that exist in New South Wales and Victoria that enable people with cognitive impairment to access support from trained supporters who are familiar with legal processes, which provide additional benefits.

The Independent Third Person program in Victoria provides support for people with cognitive impairment during police processes, including interviews.⁷⁸ This may include assisting people to understand their rights and the procedures that they are participating in, helping them to contact a lawyer, family member or friend, and facilitating communication with police.

⁷⁴ See for example: QPS Violent Confrontations Review Team, Operational Capability Command, *QPS Violent Confrontations Review*, (n.d.); Queensland Health, *When mental health care meets risk: A Queensland sentinel events review into homicide and public sector mental health responses*, 2016; Queensland Mental Health Commission, *Improving outcomes from police interactions: A systemic approach*, options paper, 2017.

⁷⁵ See for example: Public Advocate (Qld), *Better pathways: Improving Queensland's delivery of acute mental health services*, 2022; Mental Health Select Committee, Queensland Parliament, *Inquiry into the opportunities to improve mental health outcomes for Queenslanders*, Report no. 1, 57th Parliament, (2022), 121; Queensland Health, *When mental health care meets risk: A Queensland sentinel events review into homicide and public sector mental health responses*, 2016, p. 14.

⁷⁶ See for example: Coroners Court of Queensland, *Inquest into the deaths of Anthony William Young; Shaun Basil Kumeroa; Edward Wayne Logan; Laval Donovan Zimmer; And Troy Martin Foster* (20 October 2017) 2013/2988; 2014/3598; 2014/4321; 2014/4239; 2014/4357; QPS Violent Confrontations Review Team, Operational Capability Command, *QPS Violent Confrontations Review*, (n.d.).

⁷⁷ The State of Queensland, *Queensland Police Service Annual Report 2021-22*, <<https://www.police.qld.gov.au/sites/default/files/2022-10/QPS-Annual-Report-2021-22.pdf>>.

⁷⁸ Office of the Public Advocate Victoria, *Independent Third Persons*, <<https://www.publicadvocate.vic.gov.au/opa-volunteers/independent-third-persons>>.



The Justice Advocacy Service is operated by the Intellectual Disability Rights Service in New South Wales.⁷⁹ This service provides support to people with cognitive impairment to exercise their rights and participate in the criminal justice system, including during contact with police. Many clients of the program are suspects or defendants, however support is also provided to people who are victims of, or witnesses to, crimes.⁸⁰ The service utilises an individual advocacy approach, arranging a support person to be with the person when they are in contact with the criminal justice system.⁸¹ The service includes 24-hour support for people in police custody, which includes free legal advice over the telephone from a trained solicitor.

Police training and culture

Numerous reports have made recommendations relating to police training to improve responses that involve people with cognitive disability and/or mental health concerns.⁸² For example, this has included recommendations to implement, enhance or review training relating to:

- identification of disability and complex needs;⁸³
- assessing whether it would be appropriate to take a statement from a person with a cognitive disability;⁸⁴
- responses for people presenting with a dual disability;⁸⁵
- de-escalation techniques;⁸⁶ and
- use of force.⁸⁷

It has also been suggested that training be co-designed with and facilitated (or co-facilitated) by people with lived experience of a mental health condition, along with relevant non-government mental health agencies.⁸⁸

A research report from the University of New South Wales for the Disability Royal Commission noted the importance of an 'evidence-based, high quality and consistent approach to police disability awareness training'.⁸⁹

However, the report also notes that:

While there have been repeated recommendations for improved training for police from numerous inquiries in Australia over the past twenty years, there has been little action to mandate these.⁹⁰

The QPS 2021-22 annual report notes that an analysis of training needs has commenced to 'identify opportunities for the development and strengthening of cross-agency mental health training'.⁹¹

⁷⁹ New South Wales Government, *Justice Advocacy Service* (31 August 2023), <<https://dcj.nsw.gov.au/legal-and-justice/legal-assistance-and-representation/justice-advocacy-service.html>>.

⁸⁰ Department of Communities and Justice, *Evaluation of the Justice Advocacy Service*, report prepared by Ernst & Young, New South Wales, 2021.

⁸¹ New South Wales Government, *Justice Advocacy Service* (31 August 2023), <<https://dcj.nsw.gov.au/legal-and-justice/legal-assistance-and-representation/justice-advocacy-service.html>>.

⁸² See for example: Coroners Court of Queensland, *Inquest into the deaths of Anthony William Young; Shaun Basil Kumeroa; Edward Wayne Logan; Laval Donovan Zimmer; And Troy Martin Foster* (20 October 2017) 2013/2988; 2014/3598; 2014/4321; 2014/4239; 2014/4357; Queensland Health, *When mental health care meets risk: A Queensland sentinel events review into homicide and public sector mental health responses*, 2016.

⁸³ Commission of Inquiry into Queensland Police Service responses to domestic and family violence, *A call for change*, 2022.

⁸⁴ Commission of Inquiry into Queensland Police Service responses to domestic and family violence, *A call for change*, 2022.

⁸⁵ Public Advocate (Qld), *Better pathways: Improving Queensland's delivery of acute mental health services*, 2022.

⁸⁶ Queensland Health, *When mental health care meets risk: A Queensland sentinel events review into homicide and public sector mental health responses*, 2016.

⁸⁷ QPS Violent Confrontations Review Team, Operational Capability Command, *QPS Violent Confrontations Review*, (n.d.).

⁸⁸ Queensland Mental Health Commission, *Improving outcomes from police interactions: A systemic approach*, 2017; R Randall, L Bashfield, H Kennedy, F Nguyen, P Karanikolas, R Martin, S Thomas, C Maylea, *Police apprehension as a response to mental distress*, La Trobe University, Melbourne, 2023.

⁸⁹ L Dowse, S Rowe, E Baldry and M Baker, *Police responses to people with disability*, research report commissioned by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2021, p. 28.

⁹⁰ L Dowse, S Rowe, E Baldry and M Baker, *Police responses to people with disability*, research report commissioned by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2021, p. 28.

⁹¹ The State of Queensland, *Queensland Police Service Annual Report 2021-22*, <<https://www.police.qld.gov.au/sites/default/files/2022-10/QPS-Annual-Report-2021-22.pdf>>, p. 31.



While police training is important, and some of the initiatives noted above have been implemented, it is widely acknowledged that training alone is unlikely to be sufficient to ensure improved engagement by police with people with cognitive disability and mental health concerns.

Diversion and alternative approaches

Some existing options for diversion and alternative approaches to policing, such as police referrals and the co-responder program, have been discussed in this paper. However, there may also be opportunities to explore additional options for diversion or alternatives to policing, which would enable improved responses to the needs of people with cognitive disability.

Alternatives to prevent people from coming into contact with the criminal justice system, such as justice reinvestment programs, may be explored separately by the Public Advocate at a later date.

Health responses to mental health crises

It has been suggested that additional alternatives to policing should be explored to facilitate a supportive, appropriate response to people experiencing a mental health crisis.⁹²

For example, the Royal Commission into Victoria's Mental Health System recommended that responses to people experiencing mental health crises should be led by health professionals, rather than police, wherever possible.⁹³ It also recommended that protocols be revised so that Triple Zero calls related to mental health incidents are diverted to Ambulance Victoria rather than Victoria Police, and that mental health clinical assistance be available to ambulance and police to support responses in these situations.

There have also been calls for the development of a new national model for responding to mental health incidents in Australia.⁹⁴

A model called 'Right Care, Right Person', initially developed by the Humberside Police, is being rolled out across the UK.⁹⁵ Under this model, police respond to mental health related incidents only where a crime has occurred or is occurring or where there is an immediate risk of harm to a person.⁹⁶ Mental health-related calls that do not meet these criteria are referred to an appropriate agency.

However, concerns have been raised about the introduction of these changes and whether there are sufficient safeguards and funding to ensure that alternative services can respond effectively.⁹⁷

If people experiencing a mental health crisis are to be diverted away from the criminal justice system, it is important that there are health and social services available to support them.

A report by the QMHC highlighted the need for the development of safe places for people who are experiencing a mental health crisis, but who do not meet the criteria for treatment and support in a mental health service.⁹⁸

Mobile crisis response teams can also offer an alternative response for people experiencing a mental health or related crisis. For example, the Crisis Assistance Helping Out On The Streets (CAHOOTS) program in the US is a 24-hour crisis intervention program, which can be dispatched

⁹² R Randall, L Bashfield, H Kennedy, F Nguyen, P Karanikolas, R Martin, S Thomas, C Maylea, *Police apprehension as a response to mental distress*, La Trobe, Melbourne, 2023.

⁹³ Victorian Royal Commission into Victoria's Mental Health System, *Final report, Summary and recommendations* (2021) p. 46.

⁹⁴ J Beazley, 'Australia needs a national approach to dealing with mental health incidents, ACT police chief says', *The Guardian*, 20 February 2024.

⁹⁵ Metropolitan Police, *Introduction of Right Care, Right Person model* (n.d.) <<https://www.met.police.uk/notices/met/introduction-right-care-right-person-model/>>.

⁹⁶ Home Office and Department of Health and Social Care (UK), *Policy paper: National Partnership Agreement: Right Care, Right Person*, 2023.

⁹⁷ Mind, *Mind reacts to UK Government announcement of Right Care, Right Person approach* (25 July 2023) <<https://www.mind.org.uk/news-campaigns/news/mind-reacts-to-uk-government-announcement-of-right-care-right-person-approach/>>.

⁹⁸ Queensland Mental Health Commission, *Improving outcomes from police interactions: A systemic approach*, 2017.



instead of, or alongside, ambulance and police services depending on the situation.⁹⁹ In this program, teams are dispatched through local police departments but consist of a mental health crisis worker and an emergency medical technician, not police.¹⁰⁰

Community Patrols

Community Patrols, which are sometimes known by other names such as Aboriginal Patrols or Night Patrols, are an example of a community-led alternative to policing. Community Patrols are adapted to suit the community, so they can vary in terms of how they operate, however they typically aim to prevent harm and maintain the security and safety of a community.¹⁰¹ This may be achieved through providing safe transportation for people at risk of harm or at risk of causing harm, dispute resolution and mediation, and intervention to prevent self-harm, violence, homelessness and substance misuse.¹⁰² Community Patrols cooperate closely with police and other community-based services.

Adult Safeguarding Commissioner

The introduction of an Adult Safeguarding Commissioner in Queensland, as recommended in the Public Advocate's *Adult Safeguarding in Queensland* report, could enable a 'supportive intervention' approach in situations where there are concerns about the wellbeing of adults whose care and support needs put them at risk of abuse or neglect.¹⁰³ The Adult Safeguarding Commissioner would be able to receive reports of, and act on, concerns about the wellbeing of 'at-risk' adults.

The introduction of this role could assist to reduce the number of calls to emergency services that do not involve a clear crime or health emergency, and provide a response that is tailored to the needs of at-risk adults.

The Disability Royal Commission and the Independent Review of the National Disability Insurance Scheme also recommended the introduction of an adult safeguarding agency in states and territories where this has not yet been introduced.¹⁰⁴

Policy and legislative change

Clarifying the legal obligations of police

In its final report, the Disability Royal Commission notes that, for the purposes of the *Disability Discrimination Act 1992* (Cth), interactions between police and a person who is suspected of committing an offence are not considered to be a 'service' and are therefore not covered by the Act. It recommended that:

The *Disability Discrimination Act 1992* (Cth) should be amended to expressly include 'services provided by police officers in the course of performing policing duties and powers' in the definition of 'services' in section 4.¹⁰⁵

⁹⁹ Eugene Police Department Crime Analysis Unit, *CAHOOTS program analysis* (21 August 2020), <<https://www.eugene-or.gov/DocumentCenter/View/66051/CAHOOTS-program-analysis-2021-update>>.

¹⁰⁰ White Bird Clinic, *Crisis Assistance Helping Out On The Streets*, <https://whitebirdclinic.org/wp-content/uploads/2020/06/11x8.5_trifold_brochure_CAHOOTS.pdf>.

¹⁰¹ Australian Institute of Criminology, *Night Patrols*, AICrime reduction matters, no. 26, 2004, <<https://www.aic.gov.au/sites/default/files/2020-05/crm026.pdf>>.

¹⁰² Closing the Gap Clearinghouse (Australian Institute of Health and Welfare & Australian Institute of Family Studies), *The role of community patrols in improving safety in Indigenous communities*, resource sheet no. 20, Canberra, Australian Institute of Health and Welfare and Melbourne, Australian Institute of Family Studies.

¹⁰³ Public Advocate (Qld), *Adult Safeguarding in Queensland, Volume 2: Reform recommendations*, November 2022, p. 37.

¹⁰⁴ Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final report Volume 11, Independent oversight and complaint mechanisms* (2023) p. 47; Commonwealth of Australia, Department of the Prime Minister and Cabinet, *Working together to deliver the NDIS - Independent Review into the National Disability Insurance Scheme: Final Report*, 2023, p. 12.

¹⁰⁵ Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Criminal justice and people with disability*, Final report, Volume 8 (2023), p. 26.



Excited delirium

Police recognition of the rapid deterioration of the health of a person in custody was one of the issues explored during the inquest into the death of GLT by the Coroners Court of Queensland.

Recommendations made following this inquest included that:

the QPS review the use of terms such as 'excited delirium' and 'positional asphyxia' within its policies and procedures, in consultation with the QAS, to ensure that the terminology used is accurate and reflects 'best medical practice'.¹⁰⁶

Engaging with people with lived experience and their supporters

A number of reports have also highlighted the importance of police services routinely engaging with people with lived experience of a mental health condition and/or cognitive disability, their families, carers and other support people.

A report by the QMHC describes the importance of engaging with people with lived experience and building relationships, including through the work of police liaison officers.¹⁰⁷

In its final report, the Disability Royal Commission also recommended that police services introduce 'adequate numbers of dedicated disability liaison officers'.¹⁰⁸

The QMHC report also suggested that services responding to situations involving people with a mental health condition or experiencing a mental health crisis consider how family, carers and support people can be involved to provide support and advice.¹⁰⁹

It has also been suggested that people with lived experience should be involved in the design and delivery of training for police,¹¹⁰ as well as the 'co-design, implementation and evaluation of strategies to improve police responses to people with disability'.¹¹¹

Questions

1. What changes would improve interactions between Queensland Police and adults with cognitive disability?
2. Are reforms required to the *Police Powers and Responsibilities Act 2000* (Qld) and the Queensland Police Operational Procedures Manual to improve the way police interact with adults with cognitive disability?
3. What First Nations policing reforms, and alternatives to policing, should be considered for adults with cognitive disability in Queensland?
4. How can adults with cognitive disability be better supported during police interviews?
5. In what situations involving adults with cognitive disability might alternatives to a policing response be appropriate? What might those alternatives involve?

¹⁰⁶ Coroners Court of Queensland, *Inquest into the death of GLT* (3 October 2023) 2019/5112, p. 30.

¹⁰⁷ Queensland Mental Health Commission, *Improving outcomes from police interactions: A systemic approach*, 2017, p. 12.

¹⁰⁸ Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Criminal justice and people with disability*, Final report, Volume 8 (2023), p. 26.

¹⁰⁹ Queensland Mental Health Commission, *Improving outcomes from police interactions: A systemic approach*, 2017, p. 12.

¹¹⁰ Queensland Mental Health Commission, *Improving outcomes from police interactions: A systemic approach*, 2017.

¹¹¹ Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Criminal justice and people with disability*, Final report, Volume 8 (2023), p. 26.



Appendix 1: Key legislation and policies

Police

The Queensland Police Service (QPS) is the primary agency responsible for responding to criminal behaviour in the community. It is responsible for initial responses, the arresting and charging of people suspected of committing an offence, as well as prosecutions in relation to simple offences in most instances. Simple offences in Queensland are those which are usually addressed in the Magistrates Court and are called simple offences to distinguish them from the more complex and severe indictable offences.

Police Powers and Responsibilities Act

The *Police Powers and Responsibilities Act 2000*¹¹² is legislation that consolidates and provides for the powers and responsibilities of QPS in investigations and enforcing the law.

There are a number of provisions in the Act regarding people with cognitive disability, and how police are to conduct themselves in certain circumstances.

In the context of this Act, there are two definitions relevant to these provisions, as the legislation contains its own definitions of a 'person with impaired capacity' and a 'support person':

person with impaired capacity means a person whose capacity to look after or manage his or her own interests is impaired because of either of the following—

- (a) an obvious loss or partial loss of the person's mental functions;
- (b) an obvious disorder, illness or disease that affects a person's thought processes, perceptions of reality, emotions or judgment, or that results in disturbed behaviour.¹¹³

support person means ...

- (c) for a person with impaired capacity—a parent or another adult who provides or is able to provide support necessary to help care for the person by looking after or managing the person's interests.¹¹⁴

Although the definition of a 'person with impaired capacity' is different from other definitions regarding people with impaired capacity in law, there is a broad overlap in terms of conditions that affect a person's capacity.

There are three discrete times when the *Police Powers and Responsibilities Act* specifically applies to a 'person with impaired capacity': when detaining/questioning the person, when conducting forensic procedures, and when searching the person.

Detaining/questioning

Police can detain a person for a 'reasonable time' to investigate or question the person about an indictable offence that the person is suspected of having committed.¹¹⁵ What is a reasonable time is determined by police, although it cannot be longer than 8 hours. A police officer can have this time extended by making an application to a magistrate or a justice of the peace.¹¹⁶

¹¹² *Police Powers and Responsibilities Act 2000* (Qld).

¹¹³ *Police Powers and Responsibilities Act 2000* (Qld) sch 6.

¹¹⁴ *Police Powers and Responsibilities Act 2000* (Qld) sch 6.

¹¹⁵ *Police Powers and Responsibilities Act 2000* (Qld) s 403.

¹¹⁶ *Police Powers and Responsibilities Act 2000* (Qld) s 403, 405.



There are several factors that must be considered in determining what a reasonable time to detain a person amounts to, which include; 'the person's age, physical capacity and condition, and mental capacity and condition'.¹¹⁷ These factors are to be considered by police during the initial detention as well as in any application to extend the duration of detention.

Specific safeguards are found in the Act regarding how police can question people suspected of being involved in an indictable offence.¹¹⁸ Although a person with 'impaired capacity' has the same rights as any other person when being questioned (such as having the right to communicate with friends, relatives, or lawyers),¹¹⁹ more specific provisions also exist for people with 'impaired capacity'.

If a police officer suspects that the person they want to question is a person with 'impaired capacity', they must not question the person unless they (if practicable) have allowed the person to speak to a support person privately, and the support person is present while the person is being questioned.¹²⁰

For the purposes of questioning, there are a number of circumstances where a person cannot be a support person, including:

- (a) the person's ability to perform the role is substantially impaired by the effect of something the person has ingested, for example, alcohol, a drug or a potentially harmful thing, to the extent that the person is unable to act in the best interests of the relevant person;
- (b) the person is a person with an impaired capacity [sic] and the person's impairment prevents the person from acting in the best interests of the relevant person;
- (c) the person is, or appears to a police officer to be, unwilling to perform the role of a support person because of illness, injury, pain, tiredness or a similar cause;
- (d) the person has an affiliation, association or other relationship with a police officer questioning the relevant person;
- (e) the person has a relationship of authority with the relevant person that may prevent the person from acting in the best interests of the relevant person;
- (f) the person is a victim of the offence for which the relevant person is being questioned or a friend of the victim;
- (g) the person witnessed the commission of the offence for which the relevant person is being questioned.¹²¹

The Commissioner of Police must keep a general list of support persons,¹²² presumably so that officers can refer to the list when attempting to find a support person to meet the requirements detailed above.

There are also specific provisions regarding forensic procedures if a person has 'impaired capacity'.¹²³ Forensic procedures generally include gathering evidence from a person's body, such as swabs, samples, photographs and examinations.¹²⁴

If a police officer reasonably suspects that a person has 'impaired capacity', the police officer can ask the person to provide consent for a forensic procedure, but must ensure that a support person is present when the procedure is explained and consent is given.¹²⁵ The support person must also have an opportunity to speak to the person privately about the procedure. If the person does not

¹¹⁷ *Police Powers and Responsibilities Act 2000* (Qld) s 404.

¹¹⁸ *Police Powers and Responsibilities Act 2000* (Qld) ch 15 pt 3.

¹¹⁹ *Police Powers and Responsibilities Act 2000* (Qld) s 418.

¹²⁰ *Police Powers and Responsibilities Act 2000* (Qld) s 422.

¹²¹ *Police Powers and Responsibilities Act 2000* (Qld) s 428.

¹²² *Police Powers and Responsibilities Act 2000* (Qld) s 440.

¹²³ *Police Powers and Responsibilities Act 2000* (Qld) s 447.

¹²⁴ *Police Powers and Responsibilities Act 2000* (Qld) sch 6.

¹²⁵ *Police Powers and Responsibilities Act 2000* (Qld) s 452.



have the capacity to give consent, the police officer may ask a parent¹²⁶ or guardian of the person to give consent for the person.¹²⁷

Informed consent requires the police officer to provide an explanation as to why the forensic procedure is being conducted.¹²⁸

If a parent or guardian is providing consent for the procedure and the person is not present when this takes place, the police officer must also ensure that the matters below are explained to the person directly, along with informing them that they may object to the forensic procedure.¹²⁹

The following must be explained regarding a forensic procedure to obtain informed consent:

- (a) why it is proposed to perform the forensic procedure on the person;
- (b) whether it is proposed to perform an intimate forensic procedure or a non-intimate forensic procedure or both;
- (c) the general nature of the forensic procedure;
- (d) the class of qualified person who may perform the forensic procedure;
- (e) that the person may refuse to give ... consent;
- (f) that if the person gives ... consent, the person may withdraw ... consent before the forensic procedure is performed or while it is being performed.¹³⁰

If the forensic procedure includes taking a sample for DNA analysis, it must be explained that the person can limit the purpose for which the DNA analysis is to be undertaken, that the sample is a DNA sample and not a blood sample, and that it will only be used for the purposes described to the person.¹³¹

Finally, it must also be explained that the forensic procedure may provide evidence that can be used in court.¹³²

If the above explanation is given orally, police must electronically record the consent given by the person,¹³³ or, if that is not possible, then consent must be written and signed by the person.¹³⁴ If the consent is written and signed by a person with 'impaired capacity', it must also be signed by the support person who is present when the consent is given.¹³⁵

Specifically in relation to DNA samples, if consent is given to provide such a sample, the police officer must ensure a support person is present if possible.¹³⁶ If a forensic procedure is being performed by a forensic examiner (such as a doctor or a nurse) on a person with 'impaired capacity', the police must ensure that either an independent person or 'someone else' is present when the procedure is being performed.¹³⁷

Consent to a forensic procedure is considered to be withdrawn if the person who gave the consent withdraws it or, if the person has 'impaired capacity' and the consent was given by their parent, if they object or resist the procedure while it is being performed.¹³⁸

¹²⁶ Under schedule 6, for the purposes of ss 445 – 536, "parent" of a person, —

(a) means a parent or guardian of the person; and

(b) includes—

(i) for an Aboriginal person, a person who, under Aboriginal tradition, is regarded as a parent of the person; or

(ii) for a Torres Strait Islander person, a person who, under Island custom, is regarded as a parent of the person; but

(c) does not include an approved carer of the person under the Child Protection Act 1999

¹²⁷ *Police Powers and Responsibilities Act 2000* (Qld) s 452.

¹²⁸ *Police Powers and Responsibilities Act 2000* (Qld) s 453.

¹²⁹ *Police Powers and Responsibilities Act 2000* (Qld) s 453.

¹³⁰ *Police Powers and Responsibilities Act 2000* (Qld) s 454.

¹³¹ *Police Powers and Responsibilities Act 2000* (Qld) s 454(1)(g), (h).

¹³² *Police Powers and Responsibilities Act 2000* (Qld) s 454(1)(i).

¹³³ *Police Powers and Responsibilities Act 2000* (Qld) s 455(1).

¹³⁴ *Police Powers and Responsibilities Act 2000* (Qld) s 455(2).

¹³⁵ *Police Powers and Responsibilities Act 2000* (Qld) s 455(3).

¹³⁶ *Police Powers and Responsibilities Act 2000* (Qld) s 480(2).

¹³⁷ *Police Powers and Responsibilities Act 2000* (Qld) s 508.

¹³⁸ *Police Powers and Responsibilities Act 2000* (Qld) s 520.



Aside from seeking informed consent, police can perform a forensic procedure by obtaining a court order.¹³⁹ A magistrate can make such an order if they believe that performing the procedure may provide evidence that a person has committed a particular offence.¹⁴⁰ The magistrate must balance the rights and liberties of the person and the public interest when making this decision. Included in these considerations is the age, physical and mental health of the person, as well as the welfare of the person if they are a person with 'impaired capacity'.¹⁴¹

Finally, the *Police Powers and Responsibilities Act* also includes specific provisions regarding persons with 'impaired capacity' in relation to searching a person where the search involves the removal of items of clothing. If a person has 'impaired capacity' and may not be able to understand the purpose of the search, the police officer must conduct the search in the presence of a support person, unless delaying the search to wait for a support person would likely result in evidence being lost, or if the search is immediately necessary to protect the safety of a person.¹⁴²

Aboriginal and Torres Strait Islander people

The *Police Powers and Responsibilities Act* also contains a specific provision regarding Aboriginal and Torres Strait Islander people (including those with 'impaired capacity') to be applied during questioning.

When a police officer wants to question a person and 'reasonably suspects' that they are an adult Aboriginal or Torres Strait Islander person, unless the officer is aware that the person has already arranged for a lawyer to be present during questioning, the officer must:

- a) inform the person that a representative of a legal aid organisation will be notified that the person is in custody for the offence; and
- b) as soon as reasonably practicable, notify or attempt to notify a representative of the organisation.¹⁴³

However, the police are not required to do the above if, 'having regard to the person's level of education and understanding ... the person is not at a disadvantage in comparison with members of the Australian community generally.'¹⁴⁴

The person is not to be questioned unless, before the questioning starts (if practicable), they are able to speak to a support person in private and a support person is present during questioning.¹⁴⁵

The requirement for a support person can be waived in writing or via electronic recording by the person being questioned if they wish to do so.¹⁴⁶

Police can also exclude a support person if they consider that the support person is unreasonably interfering with questioning.¹⁴⁷

Queensland Police Service - Operational Procedures Manual

The Queensland Police Operational Procedures Manual (OPM) describes how members of the Queensland Police Service are to operate.¹⁴⁸ Police must comply with the OPM so that their duties are conducted lawfully, ethically and efficiently. Non-compliance with the OPM can constitute grounds for disciplinary action.¹⁴⁹

¹³⁹ *Police Powers and Responsibilities Act 2000* (Qld) ch 17 pt 3.

¹⁴⁰ *Police Powers and Responsibilities Act 2000* (Qld) s 461(1).

¹⁴¹ *Police Powers and Responsibilities Act 2000* (Qld) s 461(3).

¹⁴² *Police Powers and Responsibilities Act 2000* (Qld) s 631.

¹⁴³ *Police Powers and Responsibilities Act 2000* (Qld) s 420(2).

¹⁴⁴ *Police Powers and Responsibilities Act 2000* (Qld) s 420(3).

¹⁴⁵ *Police Powers and Responsibilities Act 2000* (Qld) s 420(4).

¹⁴⁶ *Police Powers and Responsibilities Act 2000* (Qld) s 420(5).

¹⁴⁷ *Police Powers and Responsibilities Act 2000* (Qld) s 420(6).

¹⁴⁸ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, Introduction.

¹⁴⁹ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, Introduction.



The OPM covers almost all aspects of policing in Queensland, including procedures that relate to specific situations and people. There are both mandatory and discretionary procedures,¹⁵⁰ including how police are to conduct themselves in relation to specific legislative provisions, as well as day-to-day policing requirements that are not necessarily specifically mentioned in legislation.

Extensive directions are included in the OPM detailing how police are to interact with people with cognitive disability. People with cognitive disability are noted in broader provisions covering policing and interactions with the general public. In addition, a section of the OPM is dedicated to police interactions with 'persons who are vulnerable, disabled or have cultural needs'.¹⁵¹

The commentary below covers the most relevant sections of the OPM relating to people with cognitive disability and the criminal justice system. However, as the OPM is a large and detailed document, the commentary does not include all of the details included in the document. Further information can be obtained by accessing the OPM directly (available at <https://www.police.qld.gov.au/qps-corporate-documents/operational-policies/operational-procedures-manual>).

Operational Management

Information in the OPM commences with the broader operations of QPS, including general responsibilities of policing and operational guides for documents, including police records and incident reporting.

Relevant to the discussion in this paper is reference to the applicability of the *Queensland Human Rights Act*¹⁵² when police are taking action or making decisions.¹⁵³

The OPM reiterates that the 23 human rights legislated in the *Human Rights Act* are applicable to all individuals in Queensland, including recognition and equality before the law, protection from torture and cruel, inhuman or degrading treatment, taking part in public life, and cultural rights.¹⁵⁴

Police are required to protect and promote human rights, however it is noted that, in the performance of their duties, police may also be required to limit a person's human rights, such as during arrest, detention, and when force is used.¹⁵⁵ However, police must be able to explain and justify any limitation of a person's human rights. The *Human Rights Act* also requires police to act or make decisions in a way that is compatible with human rights.¹⁵⁶

¹⁵⁰ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, Introduction.

¹⁵¹ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6 Persons who are vulnerable, disabled or have cultural needs.

¹⁵² *Human Rights Act 2019* (Qld).

¹⁵³ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 1.2.3 How does the Human Rights Act apply to the Service and its members?.

¹⁵⁴ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 1.2 Human rights and policing.

¹⁵⁵ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 1.2.3 How does the Human Rights Act apply to the Service and its members?.

¹⁵⁶ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 1.2.3 How does the Human Rights Act apply to the Service and its members?.



The 'PLAN' approach detailed below is to be followed by police when assessing whether an action or decision is compatible with human rights:¹⁵⁷

P	Proportionate	Are your limitations on the person's human rights balanced and proportionate against what you are trying to achieve?
L	Lawful	Do you have a lawful basis for your actions and for making your decisions?
A	Accountable	Have you considered human rights in your decision making? Can your actions be justified? Have you documented your considerations and reasons for your decision?
N	Necessary	Are your actions necessary to achieve your objectives? Can you do anything that will still achieve your objective but have less of an impact on the person's human rights (i.e. a less restrictive option)?

Persons who are Vulnerable, Disabled or have Cultural Needs

As noted, the OPM includes information focussed on interactions with people who are 'vulnerable, disabled or have cultural needs', whether they are suspects, complainants or witnesses.¹⁵⁸

General actions to be taken when interacting with persons who are 'vulnerable, disabled or have cultural needs' are followed by more specific actions that police must take when interacting with particular cohorts.

The following definitions are included in the OPM:

Impairment of the mind
means an intellectual, psychiatric, cognitive or neurological impairment or a combination of these resulting in:
(i) a substantial reduction of the person's capacity for communication, social interaction or learning;
and
(ii) the person needing support.

Vulnerable person
means an adult who, because of the person's age, illness or disability, is unable, or has a reduced capacity, to:
(i) care for themselves; or
(ii) protect themselves from harm or exploitation.
Examples of people with vulnerability may include Aboriginal people, Torres Strait Islander people, children, elderly, and intellectual or physical impaired people.

Cognitive Disability
means an incapacitation of the mind in some way, especially by permanent injury or disease.
Examples of a cognitive disability include memory loss and trouble concentrating, completing tasks, understanding, remembering, following instructions, and solving problems.

Cultural need
means the sum total of ways of living, incorporating beliefs and preferences rooted in a person's social and ethnic identity, which is transmitted from one generation to another.¹⁵⁹

The OPM also includes examples of the type of conditions that people defined as members of this cohort may present with, or behaviours that they may display, including:

- (i) immaturity, either in terms of age or development;
- (ii) any infirmity, including early dementia or disease;
- (iii) mental illness;
- (iv) intellectual disability;
- (v) illiteracy or limited education which may impair the person's capacity to understand the questions being put to them;

¹⁵⁷ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 1.2.3 How does the Human Rights Act apply to the Service and its members?.

¹⁵⁸ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6 Persons who are vulnerable, disabled or have cultural needs.

¹⁵⁹ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.2 Definitions.



- (vi) inability or limited ability to speak or understand the English language;
- (vii) chronic alcoholism;
- (viii) physical disabilities including being deaf, blind, hard of hearing or having low vision;
- (ix) drug dependence;
- (x) cultural, ethnic or religious factors including those relating to gender attitudes;
- (xi) intoxication, if at the time of contact the person is under the influence of alcohol or a drug to such an extent as to make them unable to look after or manage their own needs;
- (xii) Aboriginal people and Torres Strait Islanders;
- (xiii) children; and
- (xiv) persons with impaired capacity (see Schedule 4: 'Dictionary' of the *Guardianship and Administration Act*).¹⁶⁰

It is left to the individual officer to determine whether a person with whom they are communicating has vulnerabilities through an evaluation of:

- The ability of the person 'to look after or manage their own interests'.
- Their ability to understand questions and communicate the answers.
- Their ability to understand what is happening to them and being fully aware of why questions are being asked.
- Their ability to be aware of the consequences that can result from questioning and having an understanding of their rights at law.¹⁶¹

The officer is to take into account the following factors during this evaluation:

- (i) the nature of the condition giving rise to the vulnerability, disability or cultural need. For instance, some physical disabilities do not impede a person's ability to understand and answer questions. Conversely, some physical conditions do impede a person's ability to communicate e.g. deaf, hard of hearing, blind or having low vision;
- (ii) the reason the person is being spoken to or interviewed, whether as a witness, or in relation to their complicity in an offence. Where the information to be obtained may later be used in a court, it will be necessary to show that any vulnerability, disability or cultural need was addressed;
- (iii) the complexity of the information sought from or by the person;
- (iv) the impact that the results or consequences of the interview may have on the rights or liberty of any person. An interview that may substantially affect the rights or liberty of a person should be subject to greater efforts to address the person's vulnerability, disability or cultural need than an interview that is likely to have only a minor impact;
- (v) the age, standard of education, place and type of education (e.g. special school), proficiency in the English language, cultural background and work history of the person; and
- (vi) whether the person has been subject to a life event that may impact on the person's capacity to look after or manage their own interests (e.g. acquired brain injury from an accident).¹⁶²

When interviewing a person with an 'impairment of the mind', 'vulnerability, cognitive disability or cultural need', the officer is required to follow any relevant legislative requirements and, if no specific legislative requirement exists, to compensate for any issues by arranging for interpreters, independent persons or rephrasing questions.¹⁶³

A specific requirement of the OPM is that an officer must ensure interviews are conducted so that a person 'is not oppressed or overborne by any condition, circumstance or person'.

More specifically, the officer should:

- (i) avoid any situation or circumstance which may give rise to a suggestion of oppression, unfairness, fear or dominance by an officer, or to any other injustice to the person being interviewed;
- (ii) avoid any situation or circumstance whereby the person being interviewed may be overborne, oppressed or otherwise unfairly or unjustly treated;

¹⁶⁰ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.3.1 Circumstances which constitute a vulnerability, disability or cultural need.

¹⁶¹ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.3.2 Establishing whether a person is vulnerable, disabled or has a cultural need.

¹⁶² Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.3.2 Establishing whether a person is vulnerable, disabled or has a cultural need.

¹⁶³ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.3.3 Interviewing persons with an impairment of the mind, vulnerability, disability or cultural need.



- (iii) ensure that the person being interviewed is provided with sufficient assistance to enable them to understand and exercise their legal rights; and
- (iv) consider any cultural or religious factors which might cause the person being interviewed to be reluctant to provide information, e.g. devout Muslim women may be reluctant to speak in the presence of men and Aboriginal men may be reluctant to discuss certain issues in the presence of women.¹⁶⁴

As noted, there are situations in which 'support persons' may be present to assist a person when interacting with police. The OPM states that the officer in charge (OIC) of a police station is responsible for maintaining a list of support persons appropriate to their area of responsibility.¹⁶⁵

The OIC is also required to establish a list of 'independent persons' who are 'competent and willing' to assist persons who are 'vulnerable, disabled or have cultural needs' when interacting with police. The role of an independent person is to 'ensure the condition which creates the vulnerability, disability or cultural need does not disadvantage the person being interviewed.'¹⁶⁶

Officers can make inquiries via the Queensland Government's 'Disability Information and Awareness Line' to identify services that may be able to assist people with disability.¹⁶⁷

When compiling a list of independent persons, such persons should:

- (i) not be likely to overbear or overawe the person in need;
- (ii) not be employed by the Service unless the person for whose benefit the independent person is to be present specifically requests otherwise;
- (iii) have an understanding and appreciation of the condition causing the vulnerability, disability or cultural need;
- (iv) have an interest in the welfare of the person with the vulnerability, disability or cultural need; and
- (v) in the opinion of the interviewing officer, be capable of facilitating an interview with a person who has a vulnerability, disability or cultural need.¹⁶⁸

To determine whether an independent person should be present during an interview, officers are required to consider the following:

- (i) where possible allow the person with the vulnerability, disability or cultural need to select an independent person. The person with the vulnerability, disability or cultural need should be offered the list of support persons, interpreters and independent persons to select from, but may select any person whether or not that person is on the list. However, in cases where the person with the vulnerability, disability or cultural need is being interviewed in regard to an incident that may have involved the commission of an offence, an independent person who is a witness or suspected offender, accomplice or accessory should not be permitted to be present during any interview ...;
- (ii) make arrangements for an independent person to attend if necessary and explain, if possible, the role of that person to the person with a vulnerability, disability or cultural need;
- (iii) not commence any interview until the arrival of the independent person;
- (iv) upon arrival of the independent person, explain the role of the independent person to the independent person;
- (v) allow the person with the vulnerability, disability or cultural need to consult privately with the independent person prior to the interview; and
- (vi) allow the independent person to be present, and to aid the person with the vulnerability, disability or cultural need during the interview.

Where the independent person or the person with the vulnerability, disability or cultural need requests a private consultation during an interview, that request should be granted.¹⁶⁹

¹⁶⁴ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.3.3 Interviewing persons with an impairment of the mind, vulnerability, disability or cultural need.

¹⁶⁵ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.3.4 Independent persons.

¹⁶⁶ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, 6.3.5 The role of the independent person.

¹⁶⁷ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.3.4 Independent persons.

¹⁶⁸ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.3.4 Independent persons.

¹⁶⁹ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.3.4 Independent persons.



Aboriginal and Torres Strait Islander people

A person who identifies as an Aboriginal or Torres Strait Islander person is to be assumed as such by police unless the contrary is shown.¹⁷⁰ Further, it is noted that persons 'of Aboriginal and Torres Strait Islander descent should be considered people with a vulnerability, disability, or cultural need because of certain cultural and sociological conditions. When an officer intends to question an Aboriginal or Torres Strait Islander person, whether as a witness or a suspect, the existence of a need should be assumed until the contrary is clearly established' using the criteria previously noted to determine whether a person is vulnerable generally.¹⁷¹

OICs must also compile and maintain a list of local Aboriginal and Torres Strait Islander Legal Service (ATSILS) contacts and, upon request for legal advice or legal assistance at any stage, the officer must attempt to contact the appropriate legal service.¹⁷² A further requirement exists for ATSILS field officers to be treated in a similar way to lawyers, and provided with respect for their ability to liaise with people in privacy and with confidentiality.

However, an ATSILS field officer may be summoned to give evidence related to communication with a client following authorisation by a commissioned officer.¹⁷³

If a person has stated that they do not wish for a lawyer or other independent person to be present at their interview, a relative or another support person can be present. If the person states that they do not wish for any person to attend, officers should allow the person to make a written or electronic record stating that they have expressly and voluntarily waived the right to have a support person present.¹⁷⁴

When an Aboriginal and/or Torres Strait Islander person is to be interviewed, the OIC of the investigation should ask the person whether they wish to have an 'interview friend' or 'prisoner's friend' present. The OIC must consider, however, any impractical delays this may cause to an investigation. In such cases, the OIC of the case can nominate an independent person.¹⁷⁵

Officers are also required to follow the 'Anunga Rules' (specifics of which will be explored in another of the Public Advocate's criminal justice system discussion papers) when questioning Aboriginal and Torres Strait Islander people.¹⁷⁶

Homeless persons

In relation to people who are homeless, officers who interact with a 'homeless or destitute person' are instructed that they should:

- (i) refer that person to an agency for assistance, so that emergency accommodation and resources can be provided, and if asked, supply their name, rank, and station/establishment to the homeless or destitute person;
- (ii) record particulars of any assistance provided and when assistance is offered and declined by the person. Officers should record the names of the agencies referred to and any other assistance offered;
- (iii) if the person has been acting unlawfully, consider initiating a prosecution under the relevant statute; ...

¹⁷⁰ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.3.6 Aboriginal and Torres Strait Islander people.

¹⁷¹ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.3.6 Aboriginal and Torres Strait Islander people.

¹⁷² Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.3.6 Aboriginal and Torres Strait Islander people.

¹⁷³ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.3.6 Aboriginal and Torres Strait Islander people.

¹⁷⁴ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.3.6 Aboriginal and Torres Strait Islander people.

¹⁷⁵ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.3.6 Aboriginal and Torres Strait Islander people.

¹⁷⁶ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.3.6 Aboriginal and Torres Strait Islander people.



(v) ensure the homeless or destitute person is not recorded as a missing person on the Service computer system ...¹⁷⁷

Public Guardian

In the context of people who are 'vulnerable, disabled, or have cultural needs', police officers are required to note that they may be called upon to assist the Office of the Public Guardian to perform its functions.¹⁷⁸ Police investigating an offence involving a person for whom the Public Guardian is a substitute decision-maker should regularly provide the Office of the Public Guardian with information regarding the investigation and prosecution.¹⁷⁹

Cross cultural issues

The OPM notes that officers have contact with people from diverse communities and backgrounds and should remain aware of different cultural beliefs, practices, and behaviours. The Assistant Commissioner People Capability Command is responsible for police training in this area.¹⁸⁰

The OIC of a station is required to consider the specific demographics and characteristics of the local community and provide appropriate cross-cultural training for staff.

There is also a requirement for cross-cultural liaison officers to be available in all regions across Queensland.

The role of these officers is to:

- (i) establish and maintain effective liaison between police and Aboriginal, Torres Strait Islander, and other cultural communities;
- (ii) to identify the needs of communities; and
- (iii) enable appropriate policies and strategies to be developed to ensure the delivery of an equitable service within the district or region.¹⁸¹

Age related needs

For older persons, the OPM notes that police should consider referrals to support services and conduct investigations in the same way as if any other person was involved.¹⁸² Officers should also consider consulting district domestic and family violence coordinators and/or district crime prevention officers, who may be able to advise on what specific assistance and resources can be provided, given the particular vulnerabilities of older persons as victims of crime.¹⁸³

Intellectual disability

The OPM reminds officers there are distinctions related to procedures affecting people who are mentally ill and/or intellectually disabled.¹⁸⁴ Further, where 'an officer is unclear if a person is intellectually disabled, advice should be sought from an appropriate source. Community psychiatric clinics are listed as an appropriate source of advice'.¹⁸⁵

¹⁷⁷ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.3.11 Homeless persons.

¹⁷⁸ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.3.12 Public Guardian.

¹⁷⁹ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.3.12 Public Guardian.

¹⁸⁰ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.4 Cross cultural issues.

¹⁸¹ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.4.3 Cross cultural liaison officers.

¹⁸² Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.5.1 Age related needs.

¹⁸³ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.5.1 Age related needs.

¹⁸⁴ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.5.2 Intellectual disability.

¹⁸⁵ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.5.2 Intellectual disability.



Mentally ill persons

The OPM notes that a Memorandum of Understanding (MOU) has been developed by QPS with the Queensland Ambulance Service (QAS) in relation to the role of each agency in working collaboratively to safely attend incidents involving people experiencing mental health issues.¹⁸⁶

Other than in 'exceptional circumstances', police responding to such incidents are required to:

- (i) obtain the assistance of the QAS to:
 - (a) ensure the best possible medical response to the situation; and
 - (b) provide transportation for a person who is deemed in need of assessment at an authorised mental health service (AMHS);
- (ii) provide all possible assistance to the QAS personnel in such situations (this may include assisting with transportation where QAS personnel attend the scene and request such assistance); and
- (iii) provide sufficient information to QAS personnel to enable them to prevent or lessen a threat to the safety and health of any person involved in the mental health incident.¹⁸⁷

The QAS are likewise to provide sufficient information to police to enable them to prevent or lessen a threat to the health and safety of persons involved in the incident.¹⁸⁸

When there is a situation where there is no immediate risk, officers are instructed to ask the person involved if they will voluntarily obtain an assessment or treatment, and can also make a direct referral to an Authorised Mental Health Service (AMHS) if required.¹⁸⁹ Before making a referral, police are to ensure that the person knows they are making the referral, and tell the person they can refuse services when contacted by health services.¹⁹⁰

In relation to the use of restraints, the OPM notes that police 'are to treat and transport mentally ill persons with respect and in a manner which is mindful of their right to privacy and retains their dignity. Restraints should only be used as a last resort to prevent the person causing injury to themselves or someone else.'¹⁹¹

When detaining and transporting a person being assessed under an emergency examination authority under the *Public Health Act*,¹⁹² police are to:

- (i) tell the person that they are being detained and transported to a treatment or care place;
- (ii) explain how the action taken may affect the person; and
- (iii) take reasonable steps to ensure the person understands the information.¹⁹³

The officer is then required to provide the relevant paperwork to the health service upon arrival, and remain with the person for a reasonable time if requested by the health service.

For people suspected of having committed an offence, police are to consider several issues before deciding what action to take.

First, officers are required to consider:

- (i) the seriousness and nature of the alleged offence;
- (ii) the severity and nature of the person's apparent mental illness;
- (iii) the need to collect and preserve evidence which may be on the person or in their possession;
- (iv) the need to interview the person promptly;
- (v) the apparent capacity of the person to take part in any interview; and

¹⁸⁶ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.6.1 Dealing with mental illness generally.

¹⁸⁷ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.6.1 Dealing with mental illness generally.

¹⁸⁸ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.6.1 Dealing with mental illness generally.

¹⁸⁹ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.6.1 Dealing with mental illness generally.

¹⁹⁰ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.6.1 Dealing with mental illness generally.

¹⁹¹ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.6.1 Dealing with mental illness generally.

¹⁹² *Public Health Act 2005* (Qld) s 157B.

¹⁹³ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.6.2 Emergency examination authority (EEA).



(vi) the likelihood that an investigation with regard to the person could be adequately conducted at a later time.¹⁹⁴

Then the officer is to:

- (i) complete their investigation and commence any proceeding prior to taking any necessary action to have the person's mental health assessed; or
- (ii) take the necessary action to have the person's mental health assessed prior to completing the investigation into the alleged offence.¹⁹⁵

Appropriate actions in relation to requesting assessments include; facilitating voluntary referrals, making an emergency examination authority, or requesting health services to examine a person to decide whether further assessment is appropriate.¹⁹⁶

Mental health intervention coordination and training

The OPM outlines arrangements in place to implement the QPS Mental Health Intervention (MHI) program, the aim of which is to train first response officers in the de-escalation of mental health incidents through 'enhanced tactical communication skills.'¹⁹⁷ The aim of such training is to identify, provide support, and effectively intervene in situations that could otherwise result in incidents where there is a serious and imminent risk to the health and safety of a person.¹⁹⁸

The OPM requires a sufficient number of first response officers to be trained under the MHI program in each region. A regional and district MHI coordinator is responsible for activities within an area, and for the allocation of adequate time and resources to officers.¹⁹⁹

Included as part of the MHI program is an information sharing agreement between QPS, QAS and Queensland Health.²⁰⁰ If there is a crisis intervention plan in relation to a particular person prepared by Queensland Health, it will notify police of the existence of the plan, and will disclose information included in the plan if the person provides consent when an incident occurs.²⁰¹ MHI coordinators can also exchange information with representatives from QAS or Queensland Health to ensure the safety and effective treatment of a person involved in an incident that police attend.²⁰²

If a person is known to a mental health service and there is an incident involving a serious risk of harm to a person, the mental health service will provide relevant information specific to the person to prevent or lessen this risk, including:

- (i) the person's name, date of birth, present address;
- (ii) nature of mental illness;
- (iii) medical history/chart information, including recent behaviour, latest evaluation and expected responses;
- (iv) details of individuals who could best assist (e.g. caseworker, psychiatrist, treating doctor);
- (v) propensity for violence or self-harm;
- (vi) current medication including effects of medication and of non-compliance;
- (vii) warning signals indicating deterioration in the person's mental condition;

¹⁹⁴ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.6.7 Person with a mental illness suspected of having committed or charged with an offence.

¹⁹⁵ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.6.7 Person with a mental illness suspected of having committed or charged with an offence.

¹⁹⁶ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.6.7 Person with a mental illness suspected of having committed or charged with an offence.

¹⁹⁷ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.6.13 Mental health intervention coordination and training.

¹⁹⁸ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.6.13 Mental health intervention coordination and training.

¹⁹⁹ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.6.13 Mental health intervention coordination and training.

²⁰⁰ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.6.13 Mental health intervention coordination and training.

²⁰¹ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.6.13 Mental health intervention coordination and training.

²⁰² Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.6.13 Mental health intervention coordination and training.



- (viii) 'triggers' (i.e. issues that may escalate the situation);
- (ix) previous suicide attempts/tendencies;
- (x) de-escalation strategies;
- (xi) history of possessing firearms, dangerous weapons or drugs;
- (xii) next of kin details; and
- (xiii) details of any person(s) nominated for contact in an incident.²⁰³

If there is no serious risk of harm, the mental health service will provide general advice only that may assist police in de-escalating the incident, including:

- (i) advice about how to respond to a person suffering from a mental illness including an acute episode;
- (ii) advice about how particular disturbances of mental state (i.e. symptoms) may impact on the communication process, interpretation of events and behaviour;
- (iii) suggestions of possible communication strategies; and
- (iv) advice from a medical practitioner with regard to the type and effects of medications.²⁰⁴

Queensland Health can also provide on-site consultations for mental health incidents if there is capacity to do so, and the person requires such an assessment and/or treatment.²⁰⁵

Operational skills and practices

Operational skills and practices expected of officers include the use of force, and the manual provides some direction as to how officers should determine what kind of force they are to use, as well as the various categories of force that exist (open hand, closed hand, lethal, etc).²⁰⁶

Within this area, the OPM includes information on what is referred to as 'acute psychostimulant-induced episode and excited delirium'.

This information firstly defines the circumstances associated with these types of episodes, stating that when 'psychostimulant' drugs are taken, people may experience psychosis that may not be possible to be distinguished from mental health psychosis.²⁰⁷

Such an incident is referred to as 'excited delirium' that may result in death without immediate medical intervention.²⁰⁸ Various behaviours and physical symptoms are listed, with the OPM advising that certain communication strategies may be effective for police when dealing with incidents of this nature, including:

- (i) one officer conducting negotiations with the subject;
- (ii) using the individual's name (if known) to personalise the interaction;
- (iii) calm, open-ended questioning to ascertain the cause of the behaviour;
- (iv) a consistently even tone of voice, even if the person's communication style becomes hostile or aggressive;
- (v) avoidance of the use of 'no' language, which may prompt an aggressive outburst. Terms like 'I'll see what I can do' encourage further communication and are often calming;
- (vi) allow the individual as much personal space as possible while maintaining control and containment;
- (vii) reduce external stimulation of the subject by:
 - (a) avoiding rapid movements;
 - (b) reducing the noise level if possible (e.g. loud music, machinery); and
 - (c) moving bystanders and persons who may be causing agitation;
- (viii) offer positive feedback as the subject responds in a positive manner;

²⁰³ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.6.13 Mental health intervention coordination and training.

²⁰⁴ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.6.13 Mental health intervention coordination and training.

²⁰⁵ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 6.6.13 Mental health intervention coordination and training.

²⁰⁶ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 14.3 Use of force.

²⁰⁷ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 14.3.6 Acute psychostimulant-induced episode and excited delirium.

²⁰⁸ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 14.3.6 Acute psychostimulant-induced episode and excited delirium.



- (ix) suggest the subject sit down or drink water, as these actions may assist in calming [them] down;
- (x) make eye contact only occasionally, as sustained eye contact can increase fear or promote aggressive outbursts in some hostile or paranoid individuals; and
- (xi) if relevant, tell the person an ambulance has been called and medical assistance will soon arrive, or that police will take them to hospital.²⁰⁹

Further, when attempting to resolve incidents involving exhibiting behaviours and physical signs of excited delirium, officers are required to:

- (i) ensure medical assistance is sought for the person as soon as practicable;
- (ii) attempt to establish what drugs the person may have taken and when the person may have taken them, by:
 - (a) direct questioning of the person and witnesses; and
 - (b) the presence of drugs or drug paraphernalia (needles, spoons, clipseal bags etc.) on or near the person or at the place where the person is located;
- (iii) when communicating with the person, use the communication strategies as outlined in points (i) to (xi) above;
- (iv) where it is necessary to physically restrain the person:
 - (a) have sufficient officers present to achieve safe restraint in the shortest time;
 - (b) restrain the person for the least possible time and until it is safe to do otherwise; and
 - (c) restrain the person by the arms and legs, where possible avoiding chest compression;
- (v) talk calmly to the person until medical assistance is obtained;
- (vi) constantly monitor the person's physical signs and symptoms while in police custody;
- (vii) if possible, commence cooling of the person whilst waiting for medical assistance by:
 - (a) loosening of restrictive clothing;
 - (b) provision of cool oral fluids (water);
 - (c) cold or wet packs placed under armpits, on head and back of neck; and
 - (d) a cooling fan; and
- (viii) whilst waiting for medical assistance to arrive seek telephone advice from:
 - (a) the ambulance service;
 - (b) 13Health; or
 - (c) a doctor.²¹⁰

Custody

When retaining a person in custody, police officers also have a series of obligations and procedures to apply.

A protocol is to be developed between QPS (by the regional or district police cross cultural liaison officer) and ATSILS (in consultation with local Aboriginal and Torres Strait Islander groups and organisations) regarding the supply of information to ATSILS when Aboriginal and Torres Strait Islander people have been arrested or are in custody.²¹¹

The protocol is to cover:

- (i) authorisation of identified members of a legal service to whom the information is to be released;
- (ii) the location and frequency of the transfer of the information;
- (iii) the method of transfer of information;
- (iv) the identity of the member of the Service who is responsible for providing the information;
- (v) any other local arrangements that are deemed necessary and appropriate; and
- (vi) a system designed to assist Aboriginal and Torres Strait Islander persons who are charged with an offence to transfer any relevant records of interview, statements and/or bail documents to the relevant Aboriginal and Torres Strait Islander Legal Service.²¹²

²⁰⁹ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 14.3.6 Acute psychostimulant-induced episode and excited delirium.

²¹⁰ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 14.3.6 Acute psychostimulant-induced episode and excited delirium.

²¹¹ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 16.8.7 Notification to the Aboriginal and Torres Strait Islander Legal Service.

²¹² Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 16.8.7 Notification to the Aboriginal and Torres Strait Islander Legal Service.



The involvement of police or watchhouse officers in this process can include an offer to supply to the accused stamped envelopes addressed to the legal service.

Information provided to ATSILS by police officers is expected to include:

- (i) identification details of the prisoner;
- (ii) the nature of the charge(s);
- (iii) the time, date and place of the court at which the prisoner is to appear; and
- (iv) information on the health and wellbeing of the prisoner.²¹³

Also included in the OPM are specifications for how healthcare is to be managed for people in custody, with every person to be assessed and reassessed as to their needs while in custody.²¹⁴

In situations where those in custody exhibit symptoms that may reasonably be associated with a mental health condition, watchhouse managers are also expected to:

- (i) arrange for a doctor or authorised mental health practitioner to examine the person and complete a 'Recommendation for assessment' if appropriate...;
- (ii) if a 'Recommendation for assessment' is made, contact the administrator of an authorised mental health service to arrange an 'Administrator consent' at a particular authorised mental health service;
- (iii) if a 'Recommendation for assessment' and an 'Administrator consent' have been made, complete a 'Custodian consent'. The 'Recommendation for assessment' is to be attached to the 'Custodian consent'...;
- (iv) ensure that the person is transported as soon as practicable, but within seven days of the 'Recommendation for assessment' being made, to the authorised mental health service for which an 'Administrator consent' was made;
- (v) comply with s. 16.18.1: 'Transfer of prisoners'; and
- (vi) upon the removal of the person from the watchhouse, promptly advise the commissioned officer responsible for the watchhouse of the:
 - (a) name and date of birth of the person;
 - (b) details of the charges against the person;
 - (c) date and place of any scheduled court appearances of the person; and
 - (d) authorised mental health service to which the person has been transported.²¹⁵

Diversions from the criminal justice system

Police have some discretionary powers that allow for alternatives to the criminal justice system to be pursued for all suspected and accused offenders, including those with cognitive disability. This discretion can be found in both legislation (such as the *Police Powers and Responsibilities Act*) or through police policies (the OPM).

For example, under the *Police Powers and Responsibilities Act*, police have the discretion to decide not to charge a person if they believe that there is a more appropriate way for the person to be 'dealt with' and this is agreed to by the person and the victim of the offence.²¹⁶

The information below summarises specific diversions available to police under the *Police Powers and Responsibilities Act* and the OPM.

Cautions

Police have the discretion to issue a 'caution' against adults instead of commencing a criminal proceeding.²¹⁷ This applies when an offence has been established and there is sufficient evidence

²¹³ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 16.8.7 Notification to the Aboriginal and Torres Strait Islander Legal Service.

²¹⁴ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 16.13 Healthcare of persons in custody.

²¹⁵ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 16.15.2 Removing a prisoner at a watchhouse, suffering from a mental illness, to an authorised mental health service for assessment.

²¹⁶ *Police Powers and Responsibilities Act 2000* (Qld) s 377(4).

²¹⁷ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 3.2 Cautioning adults.



to prove the offence, but where it is in the public interest to caution the person instead of commencing proceedings against them.²¹⁸

Cautioning is said to be a way to address 'lower-end, non-habitual offending', its purpose being to:

- (i) manage lower-end offending in a manner that positively contributes to behaviour change and reduced recidivism;
- (ii) divert appropriate offenders from the criminal justice system; and
- (iii) reduce the disproportionate use of prosecution resources for minor matters by finalising matters in an efficient and effective manner.²¹⁹

Cautioning is available for offences that can be dealt with summarily (in the Magistrates Court) but not in relation to: offences involving domestic and family violence; drink or drug driving; offences against the *Drugs Misuse Act 1986*; or if the offending involves a victim who has suffered bodily harm or worse, or there is an outstanding financial loss to the victim.²²⁰

To be eligible for a caution, the person must not deny committing the offence, and must provide 'informed consent' to being cautioned.²²¹ The officer is to consider a range of factors to determine whether it is appropriate to caution a person, including:

- (i) if the person has recently been cautioned for a similar offence;
- (ii) characteristics of the person, such as age, mental health and special needs;
- (iii) seriousness of the offence;
- (iv) the person's willingness to consent to a referral to an available support service;
- (v) the relevance and recency of any criminal history of the person.²²²

To obtain informed consent, an officer must tell the person:

- (i) the details of the offence committed; and
- (ii) an explanation of the implications of being cautioned for the offence.²²³

In addition an officer must advise them that:

- (i) the person does not have to consent to be cautioned and may choose to have the matter dealt with by a court;
- (ii) the caution will be recorded in police records ([n]ot-for-production history) but will not be included in the person's disclosable criminal history;
- (iii) the caution is a formal process and provides an opportunity for the person to consider and address the offending behaviour and avoid entering the criminal justice system;
- (iv) after being cautioned any further offending may result in the person appearing in court; and
- (v) once a caution is administered the matter is finalised.²²⁴

Drug diversion assessment program (DDAP)

For a minor drug offence, police are required to offer a person an opportunity to participate in a drug diversion program instead of being charged with an offence.²²⁵

For a person to be eligible for drug diversion, they must:

- Not have committed another indictable offence related to the minor drug offence;
- Not have been previously sentenced to serve a term of imprisonment for certain drug offences (offences against the *Drugs Misuse Act 1986* ss 5, 6, 8 or 9D);
- Not have been previously convicted of an offence involving violence;

²¹⁸ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 3.2 Cautioning adults.

²¹⁹ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 3.2.1 Purpose of an adult caution.

²²⁰ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 3.2.2 Scope of offences.

²²¹ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 3.2.3 Eligibility to be cautioned.

²²² Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 3.2.3 Eligibility to be cautioned.

²²³ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 3.2.3 Eligibility to be cautioned.

²²⁴ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 3.2.3 Eligibility to be cautioned.

²²⁵ *Police Powers and Responsibilities Act 2000* (Qld) s 379.



- Admit, during an electronically recorded interview, to having committed the offence; and
- Not have been invited to participate in a drug diversion assessment program in the past.²²⁶

An offer to participate in the program can be made before a person appears in court. In these circumstances, the police officer must provide the person with an oral or written explanation of the program, and the person must sign an agreement to participate.²²⁷

The OPM directs that further information must also be provided regarding the program including:

- (i) the nature of the DDAP which will assess drug use, provide information about the consequences of continued drug use, assist with developing personal strategies aimed at preventing continued drug use and, where necessary, provide information about, and access to, treatment services;
- (ii) that the time required to complete a DDAP is approximately two hours;
- (iii) the requirement to participate in and complete the DDAP in the manner and at the date, time and location (if applicable) agreed, unless exceptional circumstances apply;
- (iv) that the person may be accompanied by family members or [a] friend at the DDAP to support them while they complete the program; and
- (v) the possibility that, where practicable and if providers are available, the person may undertake the DDAP at a locality of their choice (e.g. if the offender lives or works at a place other than where apprehended).²²⁸

Adult Restorative Justice Conferencing

Adult Restorative Justice Conferencing is a restorative justice program that involves both the offender and the victim coming together to discuss the offender's actions.

Referrals to this type of conference can be made by police, with procedures to be employed outlined in the OPM.²²⁹ However, referrals to restorative justice conferencing can also be made by other parties and will be discussed further in a subsequent discussion paper.

²²⁶ *Police Powers and Responsibilities Act 2000 (Qld) s 379.*

²²⁷ *Police Powers and Responsibilities Act 2000 (Qld) s 379.*

²²⁸ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 2.22.3 Eligible for drug diversion.

²²⁹ Queensland Police Service, *Operational Procedures Manual*, Issue 99, 2024, ch 3.3 Adult Restorative Justice Conferencing.

