South West Autism Network

Submission to the Law Reform Commission of WA Project 115:

Access to Western Australia's Justice System by Persons with Disability

South West Autism Network – June, 2026

This submission is made on behalf of autistic people and our families in Western Australia, with particular attention to the intersecting crises of National Disability Insurance Scheme (NDIS) reform, the criminal justice pipeline, regional and remote disadvantage, post-custodial support collapse, and the lived experience of people whose disability is poorly understood by justice institutions.

Acknowledgement of Country

The South West Autism Network acknowledges the Traditional Custodians of the lands across Western Australia, and pays respect to Elders past, present, and emerging. We acknowledge that Aboriginal and Torres Strait Islander peoples are the first peoples of this land, and that sovereignty was never ceded.

We recognise the profound and ongoing harm caused by colonisation, including the systemic over-representation of Aboriginal people with disability in our justice system.

This submission is written in recognition of that harm and in the spirit of justice, truth, and healing.

Contents

1. Executive Summary

This submission comes from the South West Autism Network, known as SWAN. SWAN is an organisation led by autistic people ourselves (peer-led), supporting autistic people and our families in regional Western Australia and across the nation. The submission is written for Project 115, an inquiry being run by the Law Reform Commission of Western Australia (the official body that reviews state laws and recommends changes) into how well people with disability can access the justice system.

Autistic people - along with people who have intellectual disability, Fetal Alcohol Spectrum Disorder (FASD, a lifelong condition caused by alcohol exposure before birth), Attention Deficit Hyperactivity Disorder (ADHD), brain injury and other neurological and neurodevelopmental conditions - are over-represented at every stage of the Western Australian justice system. They appear in far greater numbers than they do in the general population.

Around half of all adult prisoners in Western Australia, and most of the children held at Banksia Hill (Western Australia's main youth detention centre), have some form of cognitive impairment, neurodevelopmental disability, or mental illness. Aboriginal people are over-represented within this group. People often die in police or prison custody, in homes funded by the National Disability Insurance Scheme (NDIS - Australia's national programme that funds support and services for people with disability), and in hospital settings, while the system records their disability but fails to act on it. Australia has signed the United Nations Convention on the Rights of Persons with Disabilities (often shortened to CRPD, an international human rights treaty that sets out the rights of people with disability). Because Australia has signed it, Western Australia has a duty to put effective local systems in place to protect those rights.

The evidence in this submission reveals a set of recurring patterns in Western Australia's criminal justice system, including that disability is not identified; communication support does not always work; capacity is treated as all-or-

nothing; safeguarding is ineffective under the current rules; the system is built for neurotypical people; and systems and environments are not accessible. These patterns, and what needs to happen about each, are set out under the five broad themes below.

In SWAN's view, the upcoming NDIS Amendment (Securing the NDIS for Future Generations) Bill 2026, a proposed change to the law governing the NDIS, expected to pass in June, is expected to worsen this situation. It tightens the rules for who can access the scheme, allows the federal Minister to cut entire categories of support without reviewing individual cases, and proposes shifting workplace injuries and motor vehicle (car accident) injuries out of the NDIS and into separate state-run compensation schemes from 2028. The current arrangements between the NDIS and the justice system already barely function - especially around a person's release from custody, and the confusion over whether the people in their lives are meant to act as "supporters" (helping the person) or "supervisors" (monitoring and controlling them) and who should fund those roles. SWAN is pleased that the Western Australian government continues to publicly oppose this Bill in its current form.

When it comes to justice, SWAN believes the Western Australian government should consider a practical reform package, aligned with the CRPD (the UN disability rights convention). The package is organised below under five broad themes. For each theme we set out what is going wrong and what needs to happen, and we point to the specific recommendations (by code) in the Summary of Recommendations and the Appendix that give effect to it.

The Commission has an opportunity to build an accessible justice system that meets the CRPD (UN disability rights) standard and positions Western Australia as a leader in fair and equal justice. SWAN is pleased to offer this submission to the Law Reform Project 115 inquiry.

2. Summary of Recommendations

a) Diagnostic pathways and identification

What is going wrong:

Western Australia offers no free public autism diagnosis for adults over the age of 17, so disability is often only identified once a person is already inside the justice system, after a conviction, or noted as “possible autism” in a Coroner’s report and never followed up. People are not screened for disability before they enter a plea.

What needs to happen:

Include autism in the CLMIA (the Western Australian mentally-impaired-accused law); routinely screen people for disability before they enter a plea (formally respond “guilty” or “not guilty” to a charge), using a validated, non-self-report tool; and establish an in-custody diagnostic pathway where records note possible autism. Make sure data is captured for autistic and other disabled people, including those with co-occurring conditions, as a group, so the system can act on trends, for example by referring coronial findings such as the 2024 Parnell case to a multi-agency disability-justice working group, or monitoring trends in individual carceral settings (Recommendations A1, A6, D6, O1, J1, K5).

b) Communication and decision-making

What is going wrong:

The Communication Partner Program only covers accused people, so victims, witnesses, people in civil (non-criminal) cases, and people before tribunals have no equivalent right to support. People who do not speak, or who rely on AAC, are routinely shut out of decisions about their own lives. Capacity is treated as all-or-nothing, with the State Administrative Tribunal still defaulting to substitute decision-making, including authorising the sterilisation of people with intellectual disability.

What needs to happen:

Extend the right to communication support and intermediaries (trained people who help someone communicate during legal proceedings) across all Western Australian legal cases; implement the supported decision-making recommendations from the Law Reform Commission of Western Australia's earlier Project 114; and stop the sterilisation of people with disability – doing so in partner with other agencies who can make sure alternatives - appropriate sex education (through organisations like SECCA), supported decision-making, and consideration of reversible alternatives - have been implemented. (Recommendations A2, A3, A7, E1, E6).

c) Custody, oversight and safeguarding

What is going wrong:

Safeguarding is ineffective under the current rules. Restrictive practices, actions that limit a person's freedom or movement such as physical restraint, seclusion, or chemical sedation, often remain without proper oversight, including in NDIS-funded homes that fall outside the Inspector's mandate. The system is built for neurotypical people: courts, police, prisons, child protection services, crisis response services, and most justice settings assume they are dealing with someone who can "mask" (hide their autistic traits to appear typical), regulate their emotions, and communicate in conventional ways, and autistic people who cannot do these things are punished for it. Children with disability can still be held in solitary confinement.

What needs to happen:

Improve independent monitoring of people in custody; bring NDIS-funded homes that use restrictive practices on former offenders under the authority of the Inspector or implement an aligned community visitor program; ban solitary confinement for children with disability; and raise the age of criminal responsibility to 14, so that children under 14 cannot be charged with or

convicted of crimes, with possible exceptions for very serious crimes (Recommendations D1, D7, G5, G1).

d) Crisis response and regional reach

What is going wrong:

Systems, processes, and environments that are accessible to other disabled people are rarely accessible to autistic and other neurodivergent people, and access is worst outside the metro area. From brightly lit and other sensory environments that most neurodivergent people routinely struggle in, to processes that autistic people cannot carry out without support, the justice system is extremely difficult to navigate. For those who do not have routine access to support, stability, or housing on discharge, complying with what is required can be almost impossible, driving higher than usual rates of recidivism. The Mental Health Co-Response, a mental health clinician attending crisis call-outs with police, works, but only reaches metro Perth, Geraldton, and Bunbury, often part-time. Everywhere else, people in crisis get a police-only response – and with the demise of the CAT team and escalated numbers in hospitals and mental health facilities, police criteria for assistance has changed from a preventative to a corrective approach (ie something must have happened for a person to be able to access police assistance to access hospital during a welfare check or visit).

What needs to happen:

Secure funding to expand the Co-Response across regional and remote WA toward 24/7 coverage, with defined clinical pathways for people with co-occurring conditions (such as autism with mental illness, intellectual disability, FASD, ADHD, brain injury, or substance issues) so responders connect them to ongoing care rather than discharge, custody, or an emergency department; and require every justice setting, from courthouse to victim support unit, to hold its own Disability Access and Inclusion Plan (DAIP), addressing local gaps and

embedding best practice, including neurodiversity standards, in each regional department (Recommendations J5, D11).

e) Structural and rights-based reform

What is going wrong:

Justice reform too often happens in isolation from the housing, transport, workforce, and cultural supports that keep people out of the justice system in the first place. The upcoming NDIS Amendment (Securing the NDIS for Future Generations) Bill 2026 is expected to make this worse, and compensation schemes remain inaccessible to many people with disability. Autistic people, and LGBTIQA+ autistic people in particular, are a high-risk group for suicide whose risk is hidden by undifferentiated data.

What needs to happen:

Adopt a structural safeguarding approach, so justice reform is joined up with housing, transport, the disability workforce, culture, and Australia's Disability Strategy (the national long-term plan for improving the lives of people with disability); make the Criminal Injuries Compensation scheme (which pays victims of crime) and the workers' compensation system (which covers people injured at work) accessible to people with disability, and oppose the proposed removal of workers' compensation and motor vehicle accident injuries from the NDIS under the 2026 Bill; recognise autistic people, including LGBTIQA+ autistic people, as a high-risk group for suicide, review Commissioner's Operating Policy and Procedure 4.6 (COPP 4.6), and break down deaths-in-custody data into more detailed categories so patterns are not hidden; and partner with and fund disability-led organisations doing justice-specific neurodiversity work, including SWAN's own "Include Me" initiative, so that institutions, processes, and procedures themselves change, through environmental assessments, DAIP design, and sustained, mandatory, role-specific training with refreshers (for example, in the USA some jurisdictions mandate a minimum 200 hours of de-

escalation and mental health training, including “recognising patterns of behaviour… related to mental or behavioural health issue or other disability,” with 40 hours of refresher every three years) (Recommendations M1, M2, M5, K1, K1C, K1D, L1, O2, N1, P1).

Australia’s Disability Strategy and Targeted Action Plans

Australia’s Disability Strategy 2021-2031 is the Australian Government’s ten-year national plan for improving the lives of people with disability. It is delivered through Targeted Action Plans (TAPs) - short, intensive plans, each lasting two to three years and focused on a single outcome area, that set out what governments have agreed to do. The five original TAPs (Employment, Community Attitudes, Early Childhood, Safety, and Emergency Management) ran from 2021 to 2024 and have now concluded. Following the 2024 review of the Strategy, three new TAPs were launched in January 2025 for the 2025–2027 period: Inclusive Homes and Communities; Community Attitudes; and Safety, Rights and Justice (Australian Government Minister for Social Services, 2025; Department of Social Services, Disability Gateway).

SWAN’s recommendations are mapped across to WA’s Safety, Rights and Justice Targeted Action Plan 2025–2027, built directly on the recommendations of the Disability Royal Commission. This is the plan under which Western Australia, alongside the Commonwealth and the other states and territories, has already agreed to act between now and the end of 2027. Its criminal-justice actions include improving and standardising the screening, assessment and identification of disability in custody (consistent with Disability Royal Commission recommendations 8.14-8.16), establishing consistent mechanisms to record and track disability data across the justice system, enhancing supports for frontline justice workers to respond to disability, increasing the availability of communication supports between people with disability and police, courts and correctional staff, and providing trauma-informed, First Nations-informed and culturally competent training for justice, police and emergency services.

SWAN's view is that the recommendations in this submission are, in large part, the practical means by which Western Australia can deliver the commitments it has already made under the current TAPs - and, in several areas, go beyond the TAPs' wording to meet the CRPD standard in full. The table below maps SWAN's recommendations against the relevant TAP commitments. Three recommendation areas - opposition to the Commonwealth NDIS Amendment (Securing the NDIS for Future Generations) Bill 2026 (L1, K1D, parts of I3) and the sterilisation safeguards (E6) - sit outside the current TAP scope; they are noted here so that the gap is visible rather than assumed to be covered.

TAP commitment (2025-2027)	**SWAN recommendations**
Safety, Rights & Justice - Screening, assessing and identifying disability in custody (DRC Recs 8.14-8.16)	A6, B1-B3, D6, D8, D9, G2, H1, O1
Safety, Rights & Justice - Consistent mechanisms to record and track justice-system disability data	H5, J1, K5, N2, N3, O1-O3
Safety, Rights & Justice - Enhance supports for frontline justice workers to respond to disability	A4, D3, D8, J4, J5, P1
Safety, Rights & Justice - Increase communication supports between people with disability and police, courts, prisons	A1, A2, A3, A5, A7, B1, B2, B3
Safety, Rights & Justice - Trauma-informed, First Nations-informed, culturally competent justice/police training	A4, D3, H1, H2, H4, J4, N5
Safety, Rights & Justice - Prevent violence against groups at heightened risk (incl. women, children)	F1-F4, G5, G6, N1, N3
Safety, Rights & Justice - Better responses for people who have experienced trauma	C2, D10, G3, G4, J5, O2
Safety, Rights & Justice - Safe, high-quality services; effective safeguarding, complaints, and the elimination of restrictive practices	D1, D2, D4, D5, D7, D8, D10, E6, E7, J3, M3, M4
Safety, Rights & Justice - Equality before the law / rights upheld (CRPD alignment)	E1-E5, B4, G1, K1-K5, L1, M6
Inclusive Homes & Communities - Accessible environments; increase accessible housing	M1, M2, M5, D11; individual DAIPs per justice setting; (I1, I4)
Community Attitudes - Improve understanding so people act to include people with disability	P1, D11; Environments, training, culture recommendation; attitudinal safeguards (M5)

TAP commitment (2025-2027)	SWAN recommendations
**Cross-cutting (Safety TAP interface / NDIS Quality and Safeguards Commission	I1-I7, J3, M4 lineage)** - NDIS safeguarding

Full text and rationale for each recommendation is at Section 16. This is a short reference list.

A. Communication and participation (Sections 4 and 7)

- **A1.** Include autism in the CLMIA section 9 definition of mental impairment.
- **A2.** Legislate a right to a communication partner or intermediary for everyone in WA legal proceedings, whatever their role.
- **A3.** Set up a WA-wide intermediary scheme based on the ACT model.
- **A4.** Mandatory autism and communication training for judicial officers, lawyers, court staff, police, and custodial officers.
- **A5.** Require courts to actively consider CLMIA section 32 (fit with support measures) and update sentencing guidance to address autism.
- **A6.** Screen people for cognitive impairment and communication needs in the Magistrates Court before plea.
- **A7.** Independent communication assessment before any guardianship, administration, ECT, or community treatment order for non-verbal, minimally verbal, or AAC-using people.

B. CLMIA reforms (Section 4)

- **B1.** Extend the Communication Partner Program to victims and witnesses.
- **B2.** Review the section 27 Criminal Code “complete deprivation” threshold.
- **B3.** Use autism-experienced assessors for section 32 “fit with support measures” assessments.

- **B4.** Close the residual indefinite-detention pathways under the CLMIA 2023: narrow the extended custody order regime (sections 110+), remove the default life limiting term and reverse the onus for murder and manslaughter (section 262), and progressively phase out custody orders for unfit accused in favour of funded community supervision (CRPD Article 14; McGee, *No End in Sight*).

C. Sentencing and supervision (Section 6)

- **C1.** Add explicit guidance in the Sentencing Act 1995 (WA) on autism and culpability, deterrence, custodial hardship, rehabilitation, and supervision.
- **C2.** Develop disability-informed assessment for sexual offence matters involving autistic defendants.
- **C3.** Require disability assessment of supervision condition feasibility under the CLMIA and HRSO Act.
- **C4.** Joint planning between CLMIA / HRSO supervision and NDIS planning.

D. Custody conditions and oversight (Sections 14 and 13A)

- **D1.** Insert an express statutory disability mandate into the *Inspector of Custodial Services Act 2003* (WA), implementing DRC Recommendation 8.8 and OICS's own 2022 position (OICS, 2022a).
- **D2.** Establish a community visitor scheme for places of detention.
- **D3.** Make disability training (including autism-specific content) statutorily mandatory and recurrent for all adult and youth custodial staff, with independent curriculum review and public reporting.
- **D4.** Require consideration of disability before any punitive response in custody.

- **D5.** One Disability Coordination Officer per 200 people in custody, minimum.
- **D6.** Entrench statutorily the validated, non-self-report disability screen at every custody entry point, with downstream triggers and public reporting (DRC Rec 8.15).
- **D7.** Extend the Inspector's mandate to NDIS-funded homes where residents are subject to restrictive practices (*MS* [2020]; *T* [2024]).
- **D8.** Adopt and fund an overarching WA disability-in-custody model covering autism, intellectual disability, FASD, ABI, and ADHD across adult and youth custody (OICS, 2022a, 2024a).
- **D9.** Establish a youth disability framework for Banksia Hill and any other youth custodial facility, building on the Forensic Mental Health Service youth screening pilot.
- **D10.** Redesign the Crisis Care Unit at Casuarina on a therapeutic, disability-informed basis, with mandatory screening, sensory accommodations, and biennial OICS review (OICS, 2025; OICS, 2026).

E. Guardianship and supported decision-making (Section 8)

- **E1.** Implement LRCWA Project 114 supported decision-making reforms and abolish substitute decision-making, consistent with CRPD General Comment No 1 and the 2019 Concluding Observations on Australia.
- **E2.** Address how supported decision-making works for forensic patients with concurrent CLMIA and guardianship orders.
- **E3.** Repeal the guardianship gag laws.
- **E4.** Make the Mental Health Act 2014 (WA) ECT regime accessible and independently reviewable.

- **E5.** Create a simpler, non-adversarial pathway for families managing well to formalise authority (responding to *CH* [2024]).
- **E6.** Expressly prohibit non-therapeutic sterilisation, and require, for any strictly therapeutic application: SECCA referral, supported decision-making with People First WA or equivalent, consideration of every reversible alternative, and a CRPD compliance statement (responding to *AB* [2026]; *JC* [2026]).
- **E7.** Require consideration of restrictive practice authorisation in any guardianship proceeding involving a person subject to restrictive practices (*MS* [2020]; *T* [2024]).

F. Family law and child protection (Section 9)

- **F1.** Legislate procedural accommodations for parents with disability in child protection.
- **F2.** Disability-informed parenting capacity assessment frameworks, co-designed with disabled parents.
- **F3.** Culturally appropriate assessment principles for First Nations parents with disability.
- **F4.** Require assessment of NDIS funding-change impact before removal decisions.

G. Youth justice (Section 10)

- **G1.** Raise the age of criminal responsibility in WA to 14.
- **G2.** Screen for disability at every entry point to youth justice.
- **G3.** Fund a therapeutic operating philosophy at Banksia Hill and all youth custodial facilities.
- **G4.** Therapeutic diversion pathways for young people with ASD, FASD, intellectual disability, and other neurodevelopmental conditions.

- **G5.** Prohibit solitary confinement (Mandela Rules 43-45) for any person with disability, child or adult, in any WA custodial facility.
- **G6.** Implement and publicly report against the 2024 OICS youth custody and Banksia Hill security reviews, re-table the withdrawn review, and require a costed implementation plan within six months (OICS, 2024c, 2024d).

H. Aboriginal autistic people (Section 11)

- **H1.** Develop a culturally validated disability screening tool with FPDN.
- **H2.** Increase the NDIA First Nations workforce in WA.
- **H3.** Prohibit continued custody where culturally safe community supervision accommodation is absent.
- **H4.** Implement DRC Recommendation 8.16 (First Nations organisations in custody).
- **H5.** Disaggregate disability data by Aboriginal identity at every stage.
- **H6.** Routine disability assessment in every WA death in custody investigation.

I. NDIS interface (Section 12)

- **I1.** Joint CLMIA / HRSO and NDIS planning, with a “no release without a funded plan” principle.
- **I2.** NDIS Justice Liaison Officers at every WA custodial facility, properly resourced.
- **I3.** Advocate to the Commonwealth on autistic NDIS access protection, post-custody continuity, Ministerial determination review rights, and foundational supports.
- **I4.** Implement DRC Recommendation 8.18 (NDIA transition supports from at least 90 days before release).

- **I5.** Reject the 1:3 SIL ratio (proposed by the Federal Government) as a default for autistic people with complex needs, especially in post carceral settings.
- **I6.** Resolve APTOS disability-criminogenic boundary disputes (DRC Rec 8.17).
- **I7.** Resource the NDIS-CLMIA community supervision interface, including a forensic disability support workforce (*PYM*, *NG*).

J. Coronial and accountability (Section 5)

- **J1.** Multi-agency disability-justice working group to systematically review coronial findings involving people with disability.
- **J2.** Coroners to consider commissioning independent expert evidence on disability-related care.
- **J3.** Review of any NDIS SIL refusal where the person subsequently dies.
- **J4.** WA Police disability-informed crisis response protocol.

K. Civil and tribunal access (Section 13)

- **K1.** Make the CIC Act expressly accessible to people with disability across the claims process.
- **K1A.** Weight disability-related incapacity in CIC extension-of-time decisions (*Re SR* [2025]).
- **K1B.** CIC practice direction on support and accommodation for pseudonymised and identifiably disabled parties (*Re SMB* [2025]; *Ex Parte ABC* [2025]).
- **K1C.** Disability-accessible psychological injury pathway in WA workers compensation (*Morgan* [2025]; *Lourey* [2025]).

- **K1D.** Oppose the workers compensation and motor vehicle accident exclusion in the Commonwealth NDIS 2026 Bill, retain sections 104 and 105 coordination, and quantify the WA system load.
- **K2.** Adopt a CRPD Article 13 disability access framework in the State Administrative Tribunal.
- **K3.** Extend legal aid for disabled people in all civil, family, guardianship, and child protection proceedings.
- **K4.** Repeal the categorical exclusion of people with disability from jury service under section 5 of the *Juries Act 1957* (WA), and replace it with an accommodation-based framework (acknowledging LRCWA Project 99, April 2026).
- **K5.** Legislate a WA disaggregated disability data framework for the criminal, civil, child protection, guardianship, and coronial systems, building on the National Disability Data Asset.

L. Commonwealth advocacy on the 2026 NDIS Bill (Section 12)

- **L1.** WA Government to advocate against the Bill proceeding in its current form, with explicit conditions on foundational supports, individual review rights, justice-involved participant protections, and CRPD compliance.

M. Structural safeguarding (Section 13A)

- **M1.** Adapt a disability justice structural safeguarding model for WA, so that justice reform is implemented alongside the layers that prevent people reaching the justice system in the first place.
- **M2.** Sequence Project 115 reforms alongside foundational supports (housing, transport, inclusive information, workforce reform).
- **M3.** Commission a safeguarding gap audit across the criminal-civil-coronial interface.

- **M4.** Move from oversight to elimination of restrictive practices across NDIS, mental health, custodial, and supported accommodation settings in WA, with a statutory end date.
- **M5.** Treat foundational and attitudinal safeguards as preconditions for access to justice in cross-portfolio funding decisions.
- **M6.** WA Government to formally advocate for Commonwealth withdrawal of Australia's interpretative declaration on CRPD Article 12, and legislate as though it has already been withdrawn.

N. LGBTIQA+ autistic people (Section 11A)

- **N1.** Review COPP 4.6 against the lived experience of LGBTIQA+ disabled prisoners.
- **N2.** Record neurodevelopmental disability and LGBTIQA+ identity in deaths in custody data.
- **N3.** Publish annual data on placement and care of trans, gender diverse, and intersex prisoners, with disability disaggregation.
- **N4.** Include LGBTIQA+ and disability community visitors in the community visitor scheme.
- **N5.** Build the autism, intellectual disability, mental health, and LGBTIQA+ intersection into workforce training.

O. Suicide and the diagnostic gap in justice (Section 11B)

- **O1.** Routine in-custody autism diagnostic assessment where prison records contain "possible autism" or equivalent notes, with positive outcomes triggering Communication Partner Program referral, Verdins re-evaluation if relevant to sentencing, and At Risk Management System review (*Parnell* [2024]).

- **O2.** Treat autistic adults with co-occurring ADHD, intellectual disability, mental illness, polysubstance use history, or LGBTIQA+ identity as a high suicide risk cohort in WA custodial suicide prevention.
- **O3.** Refer the *Parnell* finding and similar findings to the multi-agency disability-justice working group at J1.

P. Partnering with disability-led justice work (Section 14A)

- **P1.** Partner with and fund disability-led organisations running justice-specific neurodiversity standards work in WA, including initiatives like SWAN's Include Me, so that institutions adapt rather than continuing to expect autistic and neurodivergent people to absorb the cost of inaccessible systems.

Section 1: About SWAN and the Autistic Community in Western Australia

1.1 Who We Are

The South West Autism Network (SWAN) is a peer-led community organisation representing autistic people and their families across the south-west and regional areas of Western Australia. SWAN was set up to fill a persistent gap: the absence of locally grounded, peer-driven advocacy and support for autistic people living outside metropolitan Perth. SWAN starts from the position that autistic people are the experts on their own lives, and that services and legal systems designed without genuine autistic and neurodivergent input will routinely fail the people they are meant to serve.

SWAN's membership includes autistic adults, parents of autistic children and young people, family members of autistic people, and allied professionals. SWAN operates across the south-west, Goldfields, Peel, and other regional areas of WA, as well as nationally. SWAN has direct knowledge of autistic people who have encountered the justice system, including as accused persons, victims, witnesses, and people subject to supervision orders. SWAN also has direct knowledge of autistic people whose NDIS plans have been inadequate, refused, or withdrawn at exactly the moments when support was most needed, creating crisis conditions that brought those people into contact with police, courts, and custodial settings.

This submission draws on the lived experience of SWAN's members, including family members of autistic people who have died in WA custody, in WA emergency departments, and in WA hospital and community settings. The death of Joshua Fredrik Van Malssen at Perth Station in June 2023, examined in detail in Section 5, is one of those losses. The connection between SWAN's membership and the justice system's failures in disability recognition is not incidental to this submission. It shows what SWAN's community experiences

every day: a system that treats disability as a behaviour management problem rather than a human rights matter.

1.2 The Autistic Community in Western Australia

Autism spectrum disorder (ASD) is the fastest-growing disability category in Australia, including in Western Australia. Prevalence has risen from around 5.1 per 1,000 in 2010 to 20.7 per 1,000 in 2020 (Randall et al., 2024). Across Australia, there are now around 290,000 people diagnosed with ASD, and the true number, once the large undiagnosed population is counted, is considerably higher.

In Western Australia, autism is the most common primary disability category among NDIS participants. As at 2026, autism accounts for the largest single share of NDIS plan activations in the state. But the NDIS figures only capture people who have received a diagnosis and successfully accessed the Scheme. They do not count the many thousands of autistic people in regional and remote WA who have never received a formal diagnosis, and who navigate a world designed for neurotypical people without formal identification, without funded supports, and without the protections that diagnosis-dependent systems provide.

Autism is not a single, uniform condition. It covers a wide range of presentations, cognitive profiles, communication styles, and support needs. The justice system's failure to understand this range is a central theme of this submission. Many autistic people have average or above-average intelligence, speak fluently, and can present as competent in structured settings. Those same people may be very vulnerable to misreading social cues, to exploitation, to communication breakdowns under stress, and to the specific pressures of legal proceedings. Their autism may be invisible to police, lawyers, judges, and juries. That invisibility does not protect them. It exposes them to greater harm.

1.3 Diagnosis Gaps in Regional and Remote WA

In the south-west and remote areas of Western Australia, diagnosis rates are lower than in metropolitan Perth, particularly for Aboriginal children and adults. The reasons are well documented: there are no autism diagnostic services in most regional and remote areas; the cost of a diagnosis is too high for many families; cultural factors mean disability may be understood and expressed differently in Aboriginal communities; and families in remote communities may distrust government services, including the NDIS, because of historical and ongoing child removal policies (Randall et al., 2024; Mangan & Arunachalam, 2022).

This diagnostic gap has direct justice consequences. An undiagnosed autistic person in a regional community who comes into contact with police has no formal record of disability. There is no NDIS plan to tell police, courts, or custody staff that communication adjustments are needed. There is no clinician's report to inform a legal representative. There is nothing to distinguish autism-related behaviour, such as avoiding eye contact, giving literal responses, becoming overwhelmed in unfamiliar environments, or failing to understand the social implications of a situation, from evasiveness, non-compliance, or lack of remorse.

These differences inform the experience of victims, perpetrators and others who have contact with, or who are working within, the Western Australian justice system.

1.4 The Intersection with NDIS

For autistic people who do have NDIS plans, the Scheme is, in theory, the primary way Australia meets its obligations under the Convention on the Rights of Persons with Disabilities (CRPD) to support autistic people's full and effective participation in community life, including the justice system. In practice, as Section 12 shows in detail, the NDIS is failing at the justice interface. NDIS support refusals, inadequate planning, the 1:3 Supported Independent Living

(SIL) ratio, and the proposed changes in the NDIS Amendment (Securing the NDIS for Future Generations) Bill 2026 are actively undermining the conditions that keep autistic people out of the justice system and allow them to return to the community safely after justice contact.

Under the proposed 'reforms', 241,000 people who are NDIS participants before 1 January 2028 would no longer be receiving NDIS supports by mid-2031**,** with participant numbers expected to fall to about 598,000**,** compared with 944,000 without the changes**.** Also of concern is that there are no foundational supports for those who will be forcibly exiting the scheme, or those unable to enter it (an estimated 110,000 people will be diverted from entering). Those individuals will be predominantly those with comparatively 'milder' disabilities, including those with autism and/or psychosocial disability.

SWAN believes that the proposed 'cost-saving measures' and consequential lack of support will push people into other systems, including health and justice.

1.5 Why an Autism Lens Matters

The terms of reference for Project 115 are broad and appropriately cover all persons with disability. SWAN's submission applies a specifically autistic lens to those terms of reference, while recognising that much of what is said here applies equally to people with intellectual disability, Foetal Alcohol Spectrum Disorder (FASD), acquired brain injury (ABI), mental health conditions, and other neurodevelopmental profiles. These groups overlap significantly. Many autistic people also have intellectual disability, ADHD, anxiety, and co-occurring mental health conditions. The system failures documented in this submission affect all of them.

SWAN draws the Commission's attention specifically to autism. Autism is poorly understood even by professionals who work in the justice system. Mental health and intellectual disability frameworks have longer histories in legal and clinical practice. Autism, particularly autism without intellectual disability, is still poorly

understood by police, legal practitioners, judicial officers, custody staff, and those who design court procedures and legal processes. The result is that autistic people who do not fit the expected profile of ‘person with a disability’ are failed at every stage.

This submission also reflects the specific knowledge and experiences of SWAN’s regional and remote community. The Commission must understand what failure looks like outside Perth, in towns where there is no Legal Aid office, no disability advocate, no interpreter, no public transport, and no pathway from the court to the NDIS support that might have prevented the court appearance in the first place.

Section 2: Framing: Human Rights, the CRPD, and the Legal Architecture

2.1 Introduction: Australia's CRPD Obligations

Australia ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD) on 17 July 2008. The CRPD is the first binding international human rights treaty focused specifically on the rights of persons with disability. It represents a shift away from a medical or charity model of disability and towards a social and human rights model (Kayess & French, 2008). Under the human rights model, disability is not a defect to be managed. It is a dimension of human diversity. The barriers that exclude people with disability from participating in society are social and systemic, not personal deficits.

The CRPD is directly relevant to every aspect of LRCWA Project 115's terms of reference. The terms of reference require the Commission to "have regard to" the CRPD. SWAN submits that this is not enough. The Commission's recommendations should be required to be consistent with Australia's CRPD obligations. This matters particularly because Australia has been repeatedly criticised by the UN CRPD Committee for failing to meet those obligations.

As Kayess and Sands (2020) wrote for the Disability Royal Commission (DRC):

"Australia has not fully implemented Article 12 because law, policy and practice still deny or limit legal capacity on the basis of impairment. Australia's interpretative declaration on Article 12 restricts implementation of the CRPD, prevents reform, and allows human rights violations including the denial of legal capacity, arbitrary and indefinite detention, and forced treatments and medical interventions."

This submission starts from the position that Project 115 is an opportunity for genuine, CRPD-grounded reform, but only if it goes beyond procedural

adjustments to address the underlying legal architecture that continues to deny autistic and other people with disability our fundamental rights.

2.2 Key CRPD Articles

Article 12: Equal Recognition Before the Law

Article 12 says that persons with disability have the right to recognition everywhere as persons before the law, and that they enjoy legal capacity on an equal basis with others in all aspects of life. States must take appropriate steps to give people with disability the support they need to exercise their legal capacity.

The CRPD Committee's General Comment No. 1 (2014) on Article 12 (CRPD/C/GC/1) makes clear that legal capacity and mental capacity are distinct. Legal capacity is the ability to hold rights and duties and to exercise them. Mental capacity refers to decision-making skills, which vary between individuals and across contexts. At paragraph 13, the General Comment states:

"Article 12 of the Convention … makes it clear that 'unsoundedness of mind' and other discriminatory labels are not legitimate reasons for the denial of legal capacity. Under Article 12 of the Convention, perceived or actual deficits in mental capacity must not be used as justification for denying legal capacity."

At paragraph 15, the General Comment condemns all three approaches historically used to deny legal capacity on the basis of disability: the status approach (denial based on a diagnostic label), the outcome approach (denial based on the outcome of a decision), and the functional approach (denial based on an assessment of decision-making skills). All three approaches "amount to substitute decision-making" and are incompatible with the CRPD.

At paragraph 28, the Committee is clear: "States parties' obligation to replace substitute decision-making regimes by supported decision-making requires both the abolition of substitute decision-making regimes and the development of supported decision-making alternatives."

For this submission, Article 12 is relevant to guardianship law (Section 8), the fitness to stand trial framework (Section 4), and the broader question of whether autistic people can participate meaningfully and on an equal basis in all legal proceedings that affect them.

Article 13: Access to Justice

Article 13 requires states to ensure effective access to justice for persons with disability on an equal basis with others. This includes providing procedural and age-appropriate accommodations to support their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, from the investigative stage onwards. States must also promote appropriate training for those working in the administration of justice, including police and prison staff.

This article is the direct subject of Project 115. WA currently fails to provide effective access to justice for autistic people at every stage of legal proceedings: at police investigation, at bail and remand, at trial, in sentencing, in post-sentence supervision, in civil and family proceedings, and in coronial proceedings.

Article 14: Liberty and Security

Article 14 says that persons with disability have the right to liberty and security on an equal basis with others and shall not be deprived of liberty unlawfully or arbitrarily. Critically, “the existence of a disability shall in no case justify a deprivation of liberty.” This article is engaged whenever a person is detained not because of what they have done but because of who they are, specifically because their disability means they are found unfit to stand trial, or because no community supports exist to allow their release. The CRPD Committee’s 2019 Concluding Observations on Australia identified indefinite detention as a serious area of concern (UN CRPD Committee, 2019, para 27).

Articles 15 and 17: Freedom from Torture and Integrity of the Person

Article 15 prohibits torture and cruel, inhuman, or degrading treatment of persons with disability. Article 17 protects the integrity of the person. Both articles apply to the use of solitary confinement as a behaviour management tool for autistic young people at Banksia Hill, to involuntary electroconvulsive therapy (ECT), and to non-consensual sterilisation of people with intellectual disability. All are examined in this submission.

Article 19: Living Independently and Being Included in the Community

Article 19 recognises the right of persons with disability to live in the community with choices equal to others, and requires states to take effective steps to support the full inclusion and participation of persons with disability in the community. This article is engaged by the collapse of post-custodial community supports, including NDIS SIL, that pushes autistic people back into the justice system’s revolving door.

2.3 The UN International Principles and Guidelines on Access to Justice (2020)

The UN International Principles and Guidelines on Access to Justice for Persons with Disabilities (Office of the United Nations High Commissioner for Human Rights (OHCHR), 2020), endorsed by the CRPD Committee and UN High Commissioner for Human Rights Michelle Bachelet, sets out ten principles to guide states in reforming access to justice. They are directly relevant to Project 115's terms of reference.

Principle 1 states that all persons with disability have legal capacity and no one can be denied access to justice on the basis of disability. Guideline 1.1(e) requires states to repeal or amend laws establishing doctrines of "unfitness to stand trial" and "incapacity to plead" that prevent persons with disability from participating in legal processes. Guideline 1.1(j) requires states to provide intermediaries or facilitators to enable clear communication between persons with disability and courts and law enforcement. Guideline 1.1(m) requires states to repeal laws that subject defendants with disability to detention for a definite or indefinite term based on perceived dangerousness.

Principle 3 states that persons with disability have the right to appropriate procedural accommodations. Guideline 3.2(a) requires states to establish, fund, and implement a programme of independent intermediaries trained to provide communication assistance.

Principle 10 requires that all those working in the justice system receive awareness-raising and training on the rights of persons with disability.

These principles are not aspirational. They reflect the minimum content of Australia's existing CRPD obligations. WA's current legal framework falls well short of meeting them.

2.4 The CRPD Committee's Concluding Observations on Australia (2019)

In October 2019, the CRPD Committee published its Concluding Observations on Australia's combined second and third periodic reports (CRPD/C/AUS/CO/2-3). The observations are wide-ranging and deeply critical.

On Article 12, at paragraph 23, the Committee expressed concern about "the lack of progress to abolish the guardianship system and substituted decision-making regime, particularly in decisions concerning forced psychiatric treatment, and at the lack of a timeframe to completely replace it with supported decision-making systems."

On Article 13, at paragraph 25, the Committee noted concern about: the fact that only some states and territories had passed legislation to support equal participation in the jury system; the absence of nationally consistent Disability Justice Plans; legislation that still provided for persons with disability as being unfit to plead; the over-representation of convicted young persons with disability, especially Aboriginal males, in the youth justice system; ongoing use of substitute decision-making to assist persons unable to navigate the legal system; and the absence of national data disaggregated by disability across all stages of the criminal justice system.

At paragraph 26, the Committee recommended, among other things, that Australia bring "all state, territory and federal legislation, including criminal law, and policy in compliance with the Convention to ensure due process guarantees for all persons with disabilities and ensure a review of the legal situation of persons whose equal recognition before the law is restricted and have been declared unfit to stand trial."

On Article 14, at paragraph 27, the Committee expressed serious concern about "legislative frameworks, policies and practices which result in the arbitrary and indefinite detention and forced treatment of persons with disabilities,

disproportionately experienced by Indigenous persons with disabilities, persons with intellectual or psychosocial disabilities."

At paragraph 28, the Committee urged Australia to "repeal any law and policy and cease any practice or custom that enables deprivation of liberty on the basis of impairment." It also called for data collection on the number of persons indefinitely detained, disaggregated by nature of offence, time of detention, disability, Aboriginal and other origin, sex, age, and jurisdiction.

2.5 Australia's Human Rights Framework

Rosemary Kayess is Australia's Disability Discrimination Commissioner (from January 2024), Chair of the UN CRPD Committee (from 2021), Senior Lecturer at UNSW Law, and one of the most significant disability human rights voices in the world. As a person with disability who helped draft the CRPD itself, Kayess brings unique authority to how the Convention should be interpreted.

Kayess and French (2008, p. 3) described the CRPD as ushering in "a new era in the conceptualisation of disability," moving from a welfare and charity model towards one that "reframes disability as a human rights issue, social justice issue, and development issue." In their 2020 report for the DRC, Kayess and Sands wrote that access to justice under Article 13 "is broader than the notions of fair trial and requires States to ensure that persons with disabilities can participate at all stages of the legal system," and that people with disability experiencing violence, abuse, neglect, and exploitation are often unable to seek justice "because of denial of or limitations on legal capacity" (Kayess & Sands, 2020).

This submission accepts Kayess's analysis. Denying autistic people legal capacity, whether through formal guardianship, through the fitness to stand trial framework, or through the practical denial of meaningful participation where no communication supports exist, is a human rights violation. Project 115 must address it as such.

2.6 Aboriginal Australians - No End in Sight

Patrick McGee, the founder and national coordinator of Australians for Disability Justice, has documented the catastrophic consequences of Australia's failure to meet its CRPD obligations for Aboriginal Australians with disability. His foundational report, *No End in Sight: The Imprisonment and Indefinite Detention of Indigenous Australians with a Cognitive Impairment* (Sotiri, McGee, & Baldry, 2012), found at least 30 Aboriginal people detained without trial as of its research period. The report found that Indigenous Australians with cognitive impairment are more likely to come to police attention, more likely to be charged, more likely to be remanded in custody, and more likely to stay there longer than people without cognitive impairment.

McGee's 2024 report, *Cruel, Inhuman and Degrading Treatment of People with Disability in Places of Detention* (McGee et al., 2024), catalogued contemporary conditions: children in solitary confinement; people with intellectual disability strapped into restraint chairs and injected with tranquillisers; people held indefinitely not because of their offence but because no community supports were available. McGee's account of Winmartie, a Warlpiri/Arrernte man indefinitely detained in the Forensic Disability Unit in Alice Springs for over 16 years after being found unfit to plead, is the defining case of Australia's failure to comply with the CRPD's prohibition on disability-based indefinite detention (McGee, 2024; ALHR, 2023).

The Winmartie case is not unique. Similar patterns play out in Western Australia, where people with cognitive impairment, including autistic people, remain in custody not because of the gravity of their offending but because the community supports that would allow their release do not exist. This submission examines several WA cases that show this pattern.

2.7 Disability Rights Now 2019

The Australian civil society shadow report to the CRPD Committee, *Disability Rights Now 2019* (DPO Australia, 2019), was prepared by Disabled People's Organisations Australia and endorsed by over 80 civil society organisations. It found that 50% of prisoners had a history of psychosocial disability; 33% had a disability; and 30% had an intellectual disability. Indigenous people with disability were 14 times more likely to be imprisoned than non-Indigenous people without disability. The report found that people with disability "are seen as not reliable, not capable of giving evidence, unable to make legal decisions" because of unfair attitudes, lack of support, and lack of adjustments.

At least 100 people were in prison who had not been convicted of any crime by a court. These people were overwhelmingly Indigenous, had intellectual, cognitive, or psychosocial disability, faced cultural communication barriers, and had hearing loss (DPO Australia, 2019).

2.8 The Central Thesis

Australia, and Western Australia in particular, remains in clear breach of multiple CRPD obligations. The scale and persistence of that breach is not the result of ignorance. It has been identified by the CRPD Committee, by the Disability Royal Commission, by civil society, and by the NDIA's own internal reports. It results from structural inertia, inadequate resourcing, and the persistent treatment of disability as a welfare and behaviour management problem rather than a human rights matter.

Project 115 is an opportunity for genuine reform. But that opportunity will be lost if the Commission's recommendations amount to minor procedural adjustments, such as improved information sheets for courts, or aspirational training programmes that are not mandated or funded. The reforms required must be legislative, structural, and funded.

Section 3: The Scope and Shape of the Crisis

3.1 Over-Representation in Custody

The over-representation of people with intellectual disability and cognitive impairment in Australia's criminal justice system is one of the most thoroughly documented findings in disability and justice research. Research consistently estimates that between 15% and 30% of people in custody have an intellectual or cognitive impairment, compared to around 2% to 3% in the general community (Office of the Inspector of Custodial Services (OICS), 2024).

The most recent comprehensive WA data comes from the OICS report *People in Custody with an Intellectual Disability* (OICS, 2024). The OICS found that between 2018 and October 2023, only 6% of the adult and youth custodial populations in WA were formally identified as having an intellectual disability or cognitive impairment. This is severe under-identification: the 6% figure is far below the 15% to 30% that research estimates are actually in custody with such conditions. The gap is explained mainly by the custodial system relying on self-reporting as its primary identification method, a method that is structurally unsuited to identifying cognitive and neurodevelopmental disability.

Across WA's custodial facilities, thousands of people with disability, including autistic people, people with FASD, intellectual disability, and acquired brain injury, are serving sentences and periods on remand without any formal identification of their disability, without access to disability-responsive services, and without the reasonable adjustments to conditions and programmes that their disability requires.

3.2 The Banksia Hill Study

The most alarming evidence of the extent of unrecognised neurodevelopmental impairment in WA's youth justice population comes from the landmark Telethon Kids Institute (now The Kids Research Institute Australia) study conducted at

Banksia Hill Detention Centre in 2015 and 2016, and published by Bower et al. in 2018.

The study assessed 99 sentenced young people aged 10 to 17 years at Banksia Hill for FASD and neurodevelopmental impairment. The findings were extraordinary:

- **89%** of young people had at least one domain of severe neurodevelopmental impairment, among the highest rates reported globally in any custodial or corrective setting.
- **36%** were diagnosed with FASD (95% CI 27%-46%), the highest known prevalence rate in a custodial setting worldwide.
- Of those with FASD, 34 were Aboriginal, representing a FASD prevalence among Aboriginal participants of **47%**.
- Of the 36 young people with FASD, only **two** had been previously diagnosed. The rest had been in the custodial system, often for extended periods, with an unrecognised neurodevelopmental condition shaping every aspect of their behaviour.
- Two thirds of participants had at least **three** severely impaired domains; **23%** had five or more severely impaired domains.

The domains severely impaired in FASD participants included academic skills (86%), executive functioning (78%), attention (72%), language (69%), memory (56%), motor skills (50%), and cognition (36%).

These findings establish beyond reasonable doubt that the population at Banksia Hill is overwhelmingly a neurodisability population. The young people detained there are not choosing to reoffend. They are navigating a world that has never given them a diagnosis, never provided appropriate supports, never adapted its processes to their needs, and that responds to the consequences of those failures with detention (Bower et al., 2018).

3.3 Aboriginal Over-Representation

The intersection of Aboriginality and disability in WA custody is a crisis compounding an already severe crisis. The OICS (2024) found that 60% of adults and 73% of young people with known intellectual disability or cognitive impairment in WA custody identified as Aboriginal or Torres Strait Islander.

To put this in context: Aboriginal people represent around 3.3% of WA's general population, yet they make up around 46% of WA's adult prison population and around 70% of young people at Banksia Hill. Among those in custody with known intellectual or cognitive impairment, the over-representation is even more acute. Disability and Aboriginality are not independent risk factors. They compound each other at every point in the justice system, from policing through to release (OICS, 2024; Avery, 2018).

The Australian Institute of Criminology (AIC) reported that in 2024-25, there were 113 deaths in Australian custody: 90 in prison, 22 in police custody or custody-related settings, and 1 in youth detention. Of these, 33 were Aboriginal deaths (Australian Institute of Criminology (AIC), 2025). Aboriginal people continue to die in custody at rates that constitute a national emergency, and disability, particularly cognitive and neurodevelopmental disability, is a significant but under-documented factor in those deaths.

3.4 Autism-Specific Risk Factors

Before listing the specific risk factors, the Commission should understand what the strongest evidence actually shows. Autism on its own is not a driver of offending. The largest population studies, conducted with hundreds of thousands of people, find that any apparent link between autism and offending disappears once co-occurring conditions are accounted for. A Swedish total-population study of 295,734 people found that after controlling for ADHD and conduct disorder, autism on its own was associated with a relative risk of violent conviction of 0.85, meaning a reduced risk (Heeramun et al., 2017). A Swedish sibling control study

reached the same conclusion: ADHD strongly predicted violent crime, while autism did not (Lundström et al., 2014). A Danish national study found a 0.9% conviction rate among people with childhood autism compared with 18.9% in matched controls (Mouridsen et al., 2008). A New Zealand birth-cohort study found autistic young adults had a 43.6% lower hazard of conviction than non-autistic peers (Yu et al., 2021). Systematic reviews reach the same conclusion: autistic people offend at the same rate as, or a lower rate than, comparison groups (King & Murphy, 2014; Collins et al., 2022).

What the evidence does show is that co-occurring conditions, not autism itself, drive justice contact. The same Swedish study found that ADHD or conduct disorder alongside autism substantially elevated offending risk, and that each year of diagnostic delay was associated with about a 5% higher offending risk (Heeramun et al., 2017). A meta-analysis of co-occurring mental health diagnoses in the autism population found pooled prevalence of ADHD at 28%, anxiety at 20%, depression at 11%, OCD at 9%, and schizophrenia spectrum disorders at 4% (Lai et al., 2019). A Welsh population study found autistic adults had odds 8 to 11 times the general rate for psychosis, ADHD, OCD, and schizophrenia (Underwood et al., 2022). In forensic samples, around two-thirds to four-fifths of autistic people have at least one co-occurring disorder, and it is the comorbidity, not the autism, that predicts violent offending (Chester et al., 2025). The Disability Royal Commission reached the same structural conclusion: over-representation is explained by poverty, family violence, substance use and unstable housing, not by any inherent link between disability and crime (DRC, 2023, Vol. 8).

This matters for Project 115 because the popular narrative linking autism to dangerousness is not supported by the evidence. Reform should be built around what the evidence actually shows: that autism alone does not cause offending, that early diagnosis and support are protective, and that targeted treatment of co-occurring conditions is what reduces justice contact.

With that frame established, the Commission should understand the specific risk factors that operate at the intersection of autism, co-occurring conditions, and the criminal justice system.

Suicide risk. Research from the University of Queensland published in 2024 found that people on the autism spectrum are almost three times more likely to die by suicide than non-autistic people. Autistic people without intellectual disability are more than five times more likely to die by suicide. This risk escalates sharply in custodial settings where there are no appropriate supports and where autism-related behaviours are managed punitively rather than therapeutically (University of Queensland, 2024).

Other Australian studies show autistic people have more than twice the mortality rate of the general population, with intellectual disability increasing risk, injury and poisoning among leading causes of death, and adults with intellectual disability dying at an average age of just 54 years (Hwang et al., 2019; Trollor et al., 2017).

Prison prevalence. Research by Soderstrom et al. (2016) found an ASD prevalence of around 9% among prison populations, far higher than the general community prevalence. The same research found that 63% of those screening positive for ASD also screened positive for ADHD, showing the reality of co-occurring neurodevelopmental profiles in custodial settings.

AOD pathway. Alcohol and other drug (AOD) use among autistic people is frequently linked to self-medication for undiagnosed or unsupported anxiety, depression, or sensory overwhelm, and to late diagnosis. Weir et al. (2021) found that autistic people who use substances are around nine times more likely to do so for self-medication than for social reasons. This creates a specific pathway from unmet disability need, through AOD use, to criminal justice contact (Alcohol and Drug Foundation, 2024). The Commission should understand this pathway not as a moral failing but as a direct consequence of diagnostic failure and support gaps.

Fixation and online offending. Obsessive thinking patterns and circumscribed interests, which are core features of autism, can create vulnerability to certain offence types. Allely and Creaby-Attwood (2019) analysed Australian criminal cases involving defendants with ASD and sexual offences, finding that autism symptomatology, including lack of understanding of social norms, poor social communication skills, and obsessive behaviour, was relevant to how offending behaviour developed and should be addressed in sentencing and supervision. A leading systematic review argues that for a subset of autistic people, an obsessive collecting drive combined with social naivety, online disinhibition, and impaired appreciation of victim harm can lead to possession of illegal material without paedophilic intent, and that education and treatment, not custody, best serve justice in those cases (Allely & Dubin, 2018). This draws on the counterfeit deviance concept, which distinguishes behaviour arising from developmental and knowledge deficits from genuine deviant interest (Griffiths et al., 2013). A case-control study found that circumscribed interests were significantly more likely to have contributed to the index offence among autistic offenders (Woodbury-Smith et al., 2010). This pathway also exposes a problem with standard actuarial risk tools, which rely on factors such as relationship history and so can systematically inflate risk scores for autistic defendants (Creaby-Attwood & Allely, 2017). This is examined further in Section 6.

Online radicalisation. A related but contested area is the pipeline from online extremism to offending behaviour in autistic young men. The evidence here must be handled carefully. The strongest reviews find no empirical evidence that autism on its own is a risk factor for terrorism or radicalisation, with one 2025 systematic review of 93 publications finding autism appears under-represented in group-based terrorism, suggesting some autistic traits may be protective (Salman & Al-Attar, 2025; Al-Attar, 2020).

A rapid evidence assessment rated 22 of 26 studies at the lowest evidence level and concluded that autism in itself is not a risk factor for radicalisation (Worthington et al., 2022). Where autism features at all in lone-actor or incel

samples, it operates as a contextual vulnerability alongside isolation, trauma, and co-occurring conditions, and reported figures from online self-report surveys must be treated with caution (Vespermann & Tirkkonen, 2023; Corner et al., 2016). Autistic people may be vulnerable to online radicalisation because of social isolation, difficulty with social relationships offline, and the way that structured online communities can provide a sense of belonging and clear social rules that offline environments deny (*Hoolash v The King* [2026] WASCA 61; *Czernowski and Bowles* [2026] WACorC 12). This is examined further in Section 6.5.

Credibility and false confessions. Autistic people can produce false or inconsistent accounts under police questioning, not because they are guilty, but because of autism-related communication differences: literal interpretation of questions, difficulty understanding social and conversational conventions, and vulnerability to leading questions. This creates significant risks at the investigative stage of criminal proceedings, where no communication support is currently required in WA.

3.5 Recidivism and System Failure

The Justice Reform Initiative has reported that 85% of children released from detention in WA return within a year (Justice Reform Initiative, 2024). Australia's overall prisoner recidivism rate is around 43%, with WA rates elevated for Aboriginal people (Sentencing Advisory Council of Victoria, 2024).

For autistic people, the specific dynamics are tied to the absence of post-custodial community supports. Community supervision orders under the Criminal Law (Mental Impairment) Act 2023 (WA) (CLMIA) require the participant to comply with conditions that may be impossible to meet without adequate disability support. NDIS SIL supports after release are frequently unavailable, not approved, or inadequate. An autistic person may be unable to comply with bail or supervision conditions because of the autism itself: they cannot understand complex conditions, cannot manage appointments and reporting requirements without prompting, or cannot live in shared accommodation that is unsafe for

them. These failures are then treated as wilful non-compliance rather than as disability-related support needs. The result is readmission to custody, not because of new offending, but because the community support system has failed.

Section 4: The Criminal Law (Mental Impairment) Act 2023 (WA): Progress and Gaps

4.1 Background and Context

The Criminal Law (Mental Impairment) Act 2023 (WA) (CLMIA), which commenced on 1 September 2024, replaces the Criminal Law (Mentally Impaired Accused) Act 1996 (WA) (the 1996 Act) in its entirety. The 1996 Act had been criticised for over a decade for allowing indefinite custody orders without review, for not providing adequate community supervision options, and for producing outcomes entirely disproportionate to the seriousness of the offending. The replacement legislation represents meaningful progress in a number of areas.

The Commission's terms of reference ask it to "have regard to" the CLMIA but not to specifically review it, given that the Act is subject to its own five-year statutory review. SWAN submits that this should not prevent the Commission from identifying the significant gaps the CLMIA creates for autistic people, and from recommending that Project 115 address those gaps, whether through amendment to the CLMIA or through a separate legislative instrument.

4.2 What the CLMIA Improved

The CLMIA introduced a number of important improvements:

Limiting terms (ss 46-47).

A custody order under the CLMIA must impose a limiting term, which cannot exceed the maximum penalty for the offence except in the case of murder or manslaughter. This removes the indefinite custody orders that were a defining feature of the 1996 Act and a source of serious CRPD non-compliance. The Supreme Court may extend beyond the limiting term if necessary for community protection, but this is subject to regular review by the Mental Impairment Review Tribunal (MIRT).

Mental Impairment Review Tribunal (s 156).

The MIRT, established under section 156 of the Act, replaces the Mentally Impaired Accused Review Board. The MIRT sits within the Magistrates Court and Specialist Jurisdictions Directorate, Department of Justice, and administers custody orders and community supervision orders. Importantly, the MIRT can release supervised persons without requiring the Attorney-General's approval, a significant change from the previous regime.

Communication Partner Program (s 21 + Regulation 4).

Section 21 of the CLMIA provides the statutory basis for appointing a communication partner for an accused or supervised person. The Communication Partner Programme, coordinated by the Department of Justice, provides impartial allied health professionals, including speech pathologists, psychologists, social workers, and occupational therapists, to help communication between accused persons with mental impairment and court participants. An application for a communication partner may be made at any stage of proceedings by the accused or supervised person, their representative, a legal practitioner, the Director of Public Prosecutions, or a police officer (Mental Impairment Review Tribunal, 2025).

Community supervision orders (ss 52-56).

The CLMIA provides for community supervision orders of up to five years as an alternative to custody for people found to have committed an offence or acquitted on account of mental impairment. These orders may include a range of conditions and are administered by the MIRT.

Fit with support measures (s 32).

Section 32 allows a court to find an accused fit to stand trial if, with support measures such as a communication partner, they can sufficiently understand and participate in proceedings. This is a significant shift away from the binary fit/unfit model, but, as discussed below, it is under-used.

4.3 Critical Gaps for Autistic People

Despite these improvements, the CLMIA has significant gaps for autistic people that this submission asks the Commission to address.

The definition of mental impairment does not expressly include autism. Section 9 of the CLMIA defines mental impairment to include intellectual disability, mental illness, acquired brain injury, dementia, or a combination of these. Autism is not expressly named. While autism can in some cases fall within the definition of "intellectual disability," many autistic people, particularly those without intellectual disability, do not meet that threshold. They may also not have a diagnosable "mental illness" in the psychiatric sense. Autistic people who do not fall within any of the four named categories have no access to the Communication Partner Program, no pathway to a fitness assessment under the CLMIA, and no protection from the consequences of that exclusion.

This gap is not theoretical. Cases such as *Mack v State of Western Australia* [2014] WASCA 207 show that autistic people without intellectual disability can be found formally fit to stand trial, because they can technically meet the criteria in section 26 of the CLMIA, while being unable to meaningfully understand, participate in, and benefit from a fair trial. The binary fit/unfit framework is inadequate for the range of ways autism presents.

The section 27 "complete deprivation" threshold is too high for comorbid ASD and psychosis. Section 27(1) of the Criminal Code (WA) provides a defence of mental impairment where a person was, because of a mental impairment, incapable of understanding what they were doing, or of knowing they ought not to do the act or make the omission. Courts have consistently read this as requiring "complete deprivation" of capacity, a threshold that is extremely difficult for people with comorbid ASD and psychosis to meet.

State of Western Australia v CFD [2024] WADC 85 is the most detailed recent analysis of this issue. MacLean DCJ was satisfied that the accused had ASD and a co-occurring unspecified psychotic disorder, but held that the evidence did not

show that the psychotic disorder had completely deprived the accused of either relevant capacity. The court noted the accused's post-offence conduct, including disposing of tape and soothing the child, as inconsistent with total incapacity. Significantly, the court noted that ASD alone "was not contended to account for the deprivation of the capacities."

CFD shows that for the very group, people with comorbid ASD and psychosis, where the intersection of conditions creates the most complex presentation, the existing framework provides the least support. The high threshold excludes people who are genuinely substantially impaired without being completely deprived of capacity.

Section 32 "fit with support measures" is under-used. Section 32 allows a court to find an accused fit to stand trial where, with support measures including a communication partner, the accused can sufficiently understand and participate in proceedings. This provision puts the reasonable accommodation principle into the fitness framework. However, it requires judicial officers to proactively identify when support measures would make a difference, and to appoint a communication partner before making a fitness determination. In practice, this requires judicial officers to understand autism well enough to recognise when section 32 applies. That understanding is not currently required by any training obligation or by any legislative duty to consider section 32.

The Communication Partner Program does not cover victims or witnesses. The Communication Partner Program is available only to accused or supervised persons covered by the CLMIA. It does not extend to autistic victims or witnesses in any proceeding. An autistic victim of sexual assault, an autistic witness to a violent crime, or an autistic complainant in family violence proceedings has no communication partner unless that person is also an accused or supervised person under the CLMIA. This is a fundamental gap: the communication barriers that make proceedings difficult for autistic accused are equally present for autistic victims and witnesses.

By contrast, the ACT Intermediary Program, established under the Evidence (Miscellaneous Provisions) Act 1991 (ACT) sections 4AG to 4AK, covers both victims and witnesses, and from early 2024 was extended to accused persons as well. The ACT programme matched 99.5% of 1,231 referrals between January 2020 and February 2024 to a suitable intermediary (ACT Human Rights Commission, 2024). It is the first such programme in Australia extended to accused persons. WA's Communication Partner Program, while more limited in scope, represents a meaningful but partial step towards the kind of comprehensive intermediary scheme that CRPD compliance requires.

4.4 Early Operation of the CLMIA: State v PYM [No 2] and State v NG

Two District Court decisions delivered in 2025 provide the first substantive guidance on how the CLMIA operates in practice. Both are decisions of Astill DCJ. Together they show both the structural improvements the CLMIA has delivered and the persistent gaps it has not addressed.

The State of Western Australia v PYM [No 2] [2025] WADC 54 is the first published District Court decision on disposition and limiting term provisions under Part 5 of the CLMIA following a special proceeding. Joshua Pym, then aged 30, had been found to have committed grievous harm following a stabbing of a victim with a screwdriver to the orbital socket, causing brain haemorrhage. His diagnoses included mild to moderate intellectual disability (IQ 76), chronic paranoid schizophrenia, substance use disorder, and foetal alcohol spectrum disorder indicators. He had been found unfit to stand trial on 9 September 2024 under the transitioning legislative framework. Astill DCJ made a custody order on 29 August 2025.

Three propositions from PYM [No 2] are central to how the CLMIA operates. First, the presumption in favour of a custody order under section 47 is real and operative, not merely rhetorical. Where expert opinion is unanimous that

community supervision is inadequate to manage risk, the court will make a custody order. The consensus of three expert reports was that there was no capacity to safely manage Pym's risk through community supervision. Second, the limiting term methodology under section 50 requires the court to construct a hypothetical sentence as if mental impairment were not a relevant consideration. As Astill DCJ stated, the task may require the court "when making findings of fact, to artificially ignore the potential impact the mental impairment may have had upon capacity to formulate intent." Third, the court must consider whether NDIS funding can provide adequate community support. In Pym's case, NDIS funding for Capacity Building Supports did not include any allocation for support workers and was found inadequate to support community management of risk. Insufficient NDIS resourcing does not amount to "adequate resources for the treatment, care and support of the person in the community" under section 47(1)(e).

The systemic consequence is direct: under-resourced NDIS plans will systematically produce custody orders under the CLMIA. The CLMIA's procedural protections cannot fix the upstream failure of NDIS planning. A custody order made on the basis that no community alternative exists is, in substance, an incapacitation order driven by inadequate disability support.

The court's engagement with *Bugmy v The Queen* (2013) 249 CLR 571 in PYM [No 2] is also instructive. Pym's childhood deprivation was profound: homeless from age 12, sexually and physically assaulted, exposed to drugs and alcohol in utero, 506 days absent from school. The Bugmy principle requires full weight to be given to such deprivation. However, the CLMIA's prohibition on using mental impairment as a sentencing factor creates a contradiction: the court cannot take into account how Pym's mental impairment, interacting with his childhood deprivation, elevates his risk. The mitigating and aggravating factors arising from childhood deprivation "point in different directions," and the prohibition severs the connection between deprivation, impairment, and offending behaviour.

The State of Western Australia v NG [2025] WADC 42 (Astill DCJ, 21 July 2025) addresses a different gap: the interface between the CLMIA and pleas entered in the Magistrates Court. Mr Ng pleaded guilty in the Magistrates Court on 25 January 2023 to indecently dealing with a child under 13. He was committed to the District Court for sentencing under section 99 of the *Criminal Procedure Act 2004* (WA). Expert reports raised concerns about cognitive impairment affecting Mr Ng's capacity to instruct counsel and enter pleas. By the time fitness inquiry proceedings were listed, the CLMIA had come into operation. The State raised, for the first time six months after the inquiry was listed, a preliminary objection that section 99 precluded the CLMIA from operating.

The court rejected the State's objection. Astill DCJ held at [13]: "Nothing in s 99 explicitly precludes the CLMIA from operating." The court reasoned that "sentencing proceeding" under section 9 of the CLMIA means a proceeding oriented to the imposition of a sentence in the superior court, not a proceeding in which a guilty plea has been entered in a summary court. Committal under section 99 does not in itself commence a sentencing proceeding for CLMIA purposes. The result was that the fitness inquiry could proceed.

The broader significance of NG is its exposure of a structural problem the CLMIA does not solve. The Magistrates Court has no effective mechanism to identify and respond to cognitive impairment before a guilty plea is entered. A person with intellectual disability or autism may plead guilty without any assessment of fitness to plead. They may then be committed to a superior court for sentencing, at which point the issue first emerges. Without the District Court's willingness to read "sentencing proceeding" in NG narrowly, the State's interpretation could have prevented any review of the validity of the guilty plea. Access to justice for accused persons with cognitive impairment requires active vigilance at every stage, including at the point of plea.

Together, PYM [No 2] and NG show that:

(a) The CLMIA's procedural improvements are real but are downstream of structural failures (NDIS resourcing, summary-court screening) that the Act does not fix;

(b) The custody order remains the default outcome where community resources are inadequate, turning a resource problem into a liberty deprivation;

(c) The Magistrates Court has no required process for identifying cognitive impairment before pleas are entered or convictions registered.

These gaps are addressed in the recommendations at Section 16 below (recommendations A6, A7, and I7).

4.6 DRC Recommendations on CLMIA-Related Reforms

The DRC's Final Report Volume 8 made several recommendations directly relevant to the CLMIA framework:

Recommendation 8.11 required Australian, state, and territory governments to ensure that information about disability adjustments, support services, and facilities is readily accessible to courts and legal practitioners representing people with disability in criminal proceedings. WA has accepted this recommendation.

Recommendation 8.14 required state and territory corrective services and youth justice agencies to develop national practice guidelines on screening for disability in custody.

Recommendation 8.16 required states and territories to increase resources available to First Nations organisations to provide culturally safe support services to First Nations people with disability in custody.

Recommendation 8.21 required states and territories to ensure there are effective programmes and legislative mechanisms for the diversion of people with

cognitive disability from criminal proceedings. WA has accepted this recommendation in principle.

4.7 Recommendations Arising from Section 4

Recommendation A1: Amend the CLMIA to expressly include autism spectrum disorder in the section 9 definition of mental impairment, so that autistic people without intellectual disability have access to the Communication Partner Program, the fitness assessment pathway, and the “fit with support measures” framework.

Recommendation A2: Legislate a right to a communication partner or intermediary for any autistic or otherwise neurodivergent person in any WA legal proceeding, whatever their role. The right should apply from first police contact and continue through investigation, trial, and after. It should not be limited to people who meet the CLMIA mental impairment definition.

Recommendation A3: Set up a legislated intermediary scheme in WA, based on the ACT model. It should cover all participants in all proceedings, be available 24/7, draw on trained speech pathologists, occupational therapists, psychologists, and social workers, include a formal communication assessment before interviews and hearings, and brief the court on the person’s specific communication needs.

Recommendation A4: Mandate autism and communication training at induction and annually for all judicial officers, prosecutors, defence counsel, Legal Aid staff, court registry staff, police officers, transit security, and custodial officers.

Recommendation A5: Require courts and tribunals to actively consider whether a section 32 “fit with support measures” finding is appropriate before making a finding of unfitness, and update sentencing guidance so that autism is expressly addressed in mitigation: culpability, deterrence, custodial hardship, and rehabilitation.

Recommendation A6: Screen accused people in the Magistrates Court for cognitive impairment and communication needs before plea, using a validated tool that does not rely on self-report. A positive screen should trigger Communication Partner Program referral and consideration of CLMIA fitness pathways. The screen should cover autism, intellectual disability, FASD, brain injury, and complex trauma, implementing DRC Recommendation 8.15.

Recommendation A7: Amend the Mental Health Act 2014 (WA) and the Guardianship and Administration Act 1990 (WA) so that no guardianship order, administration order, ECT order, or community treatment order can be made for a non-verbal, minimally verbal, or AAC-using person without an independent communication assessment by a speech pathologist or accredited intermediary. The assessment must be on file and considered by the decision-maker.

Section 5: Coronial Inquests: The Price of System Failure

5.1 Introduction

Coronial proceedings are the justice system's most direct encounter with the consequences of its own failures. When a person with disability dies in circumstances connected with police contact, inadequate mental health services, insufficient NDIS support, or the absence of disability-informed first responders, the coroner's inquest is often the only forum where systemic accountability can be examined. This section analyses seven WA coronial proceedings that show, with devastating clarity, what system failure looks like for autistic and neurodivergent people.

The common threads across these cases are examined at the close of the section. They are: failure of diagnosis; failure of NDIS and community supports; inadequate disability-informed first responders; silos between mental health and disability services; and over-representation of regional, remote, and Aboriginal communities.

5.2 Joshua Fredrik Van Malssen (WACOR 4 of 2026)

Joshua Fredrik Van Malssen was 24 years old when he died on 16 June 2023 at Royal Perth Hospital, following cardiac arrest after being restrained face-down by transit security staff at Perth's underground train station. Josh had Sotos syndrome, a rare condition characterised by overgrowth, learning difficulties, cognitive disability, and associated cardiac conditions. He was a gentle and good-natured young man who loved music and was well known and loved in his community.

The circumstances of Josh's death were captured on CCTV footage and described in the coroner's findings (WACOR 4 of 2026). Josh was observed acting in an erratic or distressed manner on the platform. Transit security staff were called. The restraint that followed was face-down. Josh had a number of pre-existing complex cardiac and respiratory conditions. He went into cardiac arrest during the restraint and died in hospital.

The WA Coroner's findings identified a "cascade of events" contributing to the death, including Josh's pre-existing cardiac and respiratory conditions, alcohol intoxication, physical exertion, and the face-down restraint. The coroner did not find negligence against the transit security staff. But the circumstances that led to Josh being at the station that night, alone, without supports, in a distressed state, are themselves findings of systemic failure.

A disability advocate and SWAN reported that Josh's application for Supported Independent Living (SIL) through the NDIS had been refused before his death. The NDIS had determined that Josh did not need the level of supported accommodation that SIL provides, or more support. He was therefore living in the community without the structured, supported environment that he needed. Josh was more likely to be in situations where his behaviour and distress were not recognised as disability-related, more likely to be in public spaces at times and in circumstances that created risk, and more likely to encounter police or security staff rather than disability support workers in moments of crisis.

Transit security staff had no training in disability recognition, de-escalation, or autism-informed or cognitive disability-informed communication. Josh's presentation, loud, agitated, physically large due to his Sotos syndrome, cognitively different in his communication, was read as a public order problem. It was not recognised as a disability crisis. There was no disability-informed first responder, no process for identifying that this was a young man with a significant disability who needed support rather than restraint and nobody who understood the risk of positional asphyxia, especially for a young man of Josh's size who was restrained with a backpack still on his back.

Josh's death is not an isolated incident. It is the entirely predictable outcome of a system that treats disability as a behaviour management problem. It is what happens when NDIS SIL is refused without adequate assessment of community support needs. It is what happens when transit security, police and first responders have no training in disability recognition or de-escalation. It is what happens when there is no statutory right to a disability-informed first response.

For Project 115, Josh's death raises urgent questions. Why does WA have no legislative requirement for disability-informed training for transit security and public order officers? Why does WA have no protocol for identifying disability as a contributing factor in public safety incidents? Why does the NDIS support refusal process not require consideration of the community safety consequences of that refusal? This submission proposes legislative answers to these questions.

5.3 Martin Carl Quiterio ([2026] WACorC 19, CORC 23/2024)

Martin Carl Quiterio died on 3 January 2024 at the age of 59, after jumping from a car park building in West Perth. He had a long history of mental health treatment, mainly under a diagnosis of schizophrenia, with multiple involuntary hospital admissions over many years. He was born in the Philippines and lived in Perth as a Filipino-Australian.

During 2023, clinicians at St John of God Midland Hospital (SJOG Midland) suspected ASD and recommended neuropsychological assessment. Dr Stevens at SJOG Midland identified ASD as a likely explanation for Martin's presentation. The neuropsychological assessment was never completed. When Martin was later treated by Sir Charles Gairdner Hospital (SCGH) and the Community East Central Mental Health Service (CECMHS), clinicians returned to the schizophrenia framework without resolving the diagnostic question.

On the morning of his death, Martin was visited by his NDIS support coordinator (Anchorpoint), spoke by telephone to the Mental Health Advocacy Service, and

was visited by his CECMHS care coordinator. Despite these contacts, none escalated his presentation to acute care. He died that morning.

Coroner Brendyn Nelson found that the suspected ASD had been identified but not followed through. Different treating services took inconsistent approaches: SJOG Midland identified and acted on the ASD hypothesis; SCGH and CECMHS returned to the schizophrenia framework. The independent expert, Dr Adam Brett, supported the view that a dedicated neuropsychiatric consultation and liaison service was needed for patients with suspected dual diagnoses. Coroner Nelson made two recommendations: (1) establishment of a neuropsychiatric consultation/liaison service for mental health inpatients with suspected ASD; and (2) improvement of carer support services.

Martin's case shows a pattern of profound harm that arises from diagnostic siloing in adult mental health. When a man presents with features consistent with both schizophrenia and ASD, and when those features are never properly resolved, he receives treatment calibrated to the wrong diagnosis for decades. The support coordination, medication regime, and therapeutic approach appropriate for schizophrenia differ significantly from those appropriate for ASD. Martin Quiterio spent most of his adult life receiving care calibrated to the wrong framework.

His culturally and linguistically diverse background added complexity. The cultural interpretation of distress, communication across language and culture, and the dynamics of a Filipino-Australian family navigating the Australian mental health system, all created additional layers of miscommunication and misinterpretation.

For Project 115, Martin's case demonstrates the urgent need for: (a) neuropsychiatric consultation and liaison services in WA mental health settings; (b) cultural safety protocols for CALD patients with suspected ASD; (c) mechanisms to ensure that diagnostic hypotheses identified by one treating service are not quietly abandoned by the next.

5.4 Child SK ([2024] WACOR 1, CORC 1531 of 2020)

Child SK was a 13-year-old girl who died on 23 July 2020 after intentionally stepping in front of a car on Albany Highway in the presence of her parents. She had spent 30 days as an inpatient in the mental health unit at Perth Children's Hospital (PCH) in the six weeks before her death, and had attended the emergency department eight times in that period. She had been referred four times to the Bentley Family Clinic (BFC) since 2015. A possible diagnosis of Emotionally Unstable Personality Disorder (EUPD) had been made in May 2020. She also had an ASD assessment history.

Coroner Philip Urquhart found that the system had not provided Child SK with an adequate step-up/step-down (SUSD) facility for children under 16 with serious mental health issues. Western Australia has no such facility. PCH was the only intensive option available, and the cycle of acute admission and premature discharge without adequate community support was itself a significant contributor to the escalating crisis in her final weeks. The Coroner made two formal recommendations: an Acute Care and Response Team for children, and a step-up/step-down facility for children under 16.

The ASD dimension of this case is significant and under-examined in the findings. The diagnostic tension between ASD and EUPD in adolescent girls is a well-documented clinical challenge. Autistic girls are frequently misdiagnosed with EUPD or borderline personality disorder because their autism-related emotional dysregulation, communication differences, and responses to social demands are incorrectly attributed to personality pathology rather than neurodevelopmental difference. The system never resolved this diagnostic ambiguity for Child SK. The BFC, PCH, the Department of Communities, and the Mental Health Commission all engaged with her without a clear diagnostic framework to guide care planning.

The four child protection concern referrals and the Department of Communities' involvement in her case show the intersection between mental health, disability, and child protection that is examined further in Sections 8 and 9.

5.5 Child J ([2021] WACorC 45, CORC 11/2017)

Child J was a young Aboriginal boy born in Geraldton in July 2001, who died by hanging in Broome on 25 April 2017 at the age of 15. He had spent most of his life in out-of-home care (OOHC), initially placed with non-indigenous foster carers in Broome. He showed signs consistent with FASD from an early age, though he was never formally diagnosed. He had a long history of contact with child and adolescent mental health services (CAMHS), began self-harming at around 6 or 7 years of age, and was diagnosed with clinical depression from 2013.

Deputy State Coroner Sarah Linton identified multiple systemic concerns: the failure to provide a formal FASD diagnosis throughout Child J's life; the fact that Child J's foster carers did not receive Department of Communities training on FASD until 2019, two years after his death; reduced contact with mental health services in his final years despite complex needs; and the challenge of providing culturally appropriate support for an Aboriginal child who was not placed with kin.

Had Child J received a formal FASD assessment, his care plans, therapeutic approach, and the expectations placed upon him might have been calibrated to his actual neurodevelopmental capacity. The behaviours treated as wilfulness, non-compliance, or emotional volatility were almost certainly the expression of severe executive function impairment, memory impairment, and the effects of prenatal alcohol exposure. The failure to diagnose, across the 15 years of his life, a condition that was almost certainly present, is a systemic failure of diagnostic justice for Aboriginal children in regional WA.

Child J's case is examined further in Section 11 in the context of Aboriginal over-representation and the diagnostic gap in remote communities.

5.6 Peter Wilson ([2024] WACOR 27, CORC 2901/2021)

Peter Wilson died on 1 November 2021 at Fiona Stanley Hospital, after dousing himself with boat fuel and setting himself alight at his mother's home while subject to a community treatment order (CTO). He was 41 years old. He had a complex psychiatric history, including drug-induced psychosis, bipolar affective disorder with psychotic features, and a mood disorder. He had a significant history of medication non-compliance driven by intolerable side effects, including substantial weight gain and tardive dyskinesia.

Coroner Michael Jenkin found that the quality of care, while not exemplary, did not breach the standard of acceptable clinical practice. Independent expert Dr Adam Brett found that the care fell within the range of acceptable practice, though he identified concerning features. The case shows the fragility of the CTO community treatment model for people with complex, treatment-resistant psychiatric histories.

While Peter Wilson's case does not involve ASD or intellectual disability as primary diagnoses, it is included here for what it reveals about the systemic vulnerabilities in the Mental Health Act 2014 (WA) community treatment framework. The CTO model places people with serious psychiatric disability in the community with limited support, inadequate escalation pathways, and medication regimens that produce intolerable side effects. When medication non-compliance is treated as a compliance failure rather than a signal for medication review and a stepped-up support response, the consequences can be fatal.

For Project 115, Peter Wilson's case reinforces the need for robust step-up/step-down pathways between CTO community management and inpatient care, and for medication regimes that are person-centred rather than protocol-driven.

5.7 Jalen Hunter Norris ([2025] WACorC 11, CORC 914/2021)

Jalen Hunter Norris died on railway tracks, with the inquest delivered in 2025. The full text of the coroner's findings was not publicly available on AustLII at the time of preparation of this submission. Available information confirms that the inquest raises issues about mental health services, disability support, and systemic failings in preventing suicide in young people with disability, including how mental health presentations in young people with possible neurodevelopmental conditions are identified and responded to by services.

The pattern of a young person presenting differently, not fitting the expected clinical profile for the service they encounter, and falling between service gaps, is consistent with the other cases examined in this section. SWAN will supplement this analysis when the full coronial findings become available.

5.8 Lachlan Bowles and the Kellerberrin Shooting ([2026] WACorC 12, CORC 64 and 65/2023)

On 7 September 2023, Lachlan Bowles (25) shot his workmate Terry Czernowski (44) at grain silos in Kellerberrin, in the Wheatbelt region. After a prolonged negotiation with police Tactical Response Group officers lasting around 4.5 hours, during which Bowles surrendered three of four firearms, Bowles shot himself. Terry Czernowski also died.

Expert forensic psychiatric evidence from Dr Mark Hall found that Bowles likely had undiagnosed autism spectrum disorder, along with underlying anxiety, and had developed severe depression following rejection by both the Australian Defence Force and WA Police in 2019 and 2022 respectively. Nazi armband and swastika paraphernalia were present, but Coroner Jenkin found that "nationalist racist violent extremism was not the driving force behind the actions." The evidence supported the conclusion that Bowles' actions were most likely the

result of severe depression and impaired judgment in the context of likely undiagnosed ASD, not ideological commitment.

Dr Hall explained that the inflexible thinking often associated with ASD, combined with the repeated rejections by institutions Bowles had sought to join, pushed him towards online extremist ideology as a framework for his distorted worldview. The online radicalisation pipeline, from social isolation through extremist forums to violent fantasy, is increasingly well documented for autistic young men who cannot find belonging and purpose in conventional social settings.

Bowles had no recorded mental health history, no engagement with services, and had disclosed no suicidal ideation. He was invisible to every system that might have helped him until a fatal event. The Wheatbelt's isolation, with no mental health services, no disability support, and no community networks that could have recognised what was happening, compounded the tragedy.

For Project 115, the Bowles case makes two arguments. First, undiagnosed ASD in adult men, particularly in regional and remote areas, is a preventable public safety issue. Undiagnosed ASD creates the conditions for depression, social isolation, and vulnerability to extremist ideation. Accessible, regional diagnostic pathways, counter messaging about race and immigration, community connections and disability support would have materially changed the trajectory of this young man's life. Second, police crisis negotiation capacity needs to be integrated with mental health and neurodevelopmental expertise, including in regional settings.

5.9 Common Threads

Across these seven cases, five systemic failures recur with striking consistency.

Failure of diagnosis. In six of the seven cases, ASD, FASD, or another neurodevelopmental condition was either undiagnosed, late-diagnosed, or identified but not acted upon. In not a single case was there a prompt, well-resourced pathway from clinical identification of possible neurodevelopmental

difference to a confirmed diagnosis and calibrated support plan. The absence of diagnosis creates a cascade: wrong treatment framework, ineffective services, missed warning signs, and, ultimately, preventable death.

Failure of NDIS and community supports. In three cases, NDIS inadequacy was a direct contributing factor. For Josh Van Malssen, NDIS SIL refusal removed the structured support that might have prevented his public crisis. For Martin Quiterio, the NDIS support coordination system was in place but disconnected from the clinical recognition of ASD as a diagnostic framework. For Peter Wilson, CTO management was not adequately supplemented by NDIS-funded community supports.

Inadequate disability-informed first responders. In every case involving police or security contact, from Josh Van Malssen at Perth Station to the Kellerberrin negotiation with Lachlan Bowles, there was no protocol, training, or legal framework requiring the responding officers or security staff to identify disability as a relevant factor and adjust their response accordingly.

Silos between mental health and disability services. Martin Quiterio's case is the clearest example of this problem, but it is present in Child SK's case and in Child J's case as well. When a person presents with features consistent with both a psychiatric condition and a neurodevelopmental condition, they fall between service systems that are funded and trained for one or the other, not both.

Over-representation of regional, remote, and Aboriginal communities. Child J, Lachlan Bowles, and the service deserts that contributed to each of their deaths are partly a product of geography. The south-west, Wheatbelt, and Kimberley regions of WA lack the clinical infrastructure that metropolitan Perth has, inadequate as that infrastructure itself is.

Section 6: Autistic Accused, Sentencing, and Post-Sentence Supervision

6.1 Introduction

This section looks at how WA courts have dealt with autism in criminal proceedings. It focuses on sentencing, culpability frameworks, post-sentence supervision, and how those interact with the NDIS and the High Risk Serious Offenders Act 2020 (WA) (HRSO Act). The cases show both some progress and serious, ongoing gaps in how the legal framework treats autistic accused persons.

Australian courts already recognise that autism can reduce moral culpability and that general deterrence carries little weight for autistic offenders, applying the Verdins principles, though only where expert evidence establishes the link to the offending (Wolf, 2021). The leading appellate authorities include *R v George* [2004] NSWCCA 247 (Australia's first appellate recognition that autism can reduce culpability), *R v Sokaluk* [2012] VSC 167 (autism and intellectual disability as Verdins mitigation balanced against community protection), *R v Hampson* [2011] QCA 132 (limited mitigation in online offending without expert evidence on the nexus), and *LS v R* [2020] NSWCCA 120 (young autistic person with severe ADHD; rehabilitation prioritised; sentence reduced). In WA, *Mack v The State of Western Australia* [2014] WASCA 207 remains the leading authority on autism and fitness to stand trial, and recognised imprisonment as a heavier burden for an autistic person.

Two themes recur across these cases. First, autistic presentations such as flat affect, literal compliance, or apparent lack of concern are easily misread as malign intent unless explained by expert evidence (Sasson et al., 2017; Milton, 2012). Second, access to that expert evidence is uneven across the WA system, so autistic people who cannot fund neurodevelopmental assessment are systematically disadvantaged at sentencing.

6.2 State v CFD [2024] WADC 85: Comorbid ASD and Psychosis

State of Western Australia v CFD [2024] WADC 85 was decided by MacLean DCJ in the District Court of Western Australia on 2 October 2024. The accused was charged with aggravated home burglary, unlawfully impeding the breathing of a seven-year-old girl, unlawfully impeding her blood circulation, sexual penetration of a child under 13, and indecent dealing. He pleaded not guilty on account of mental impairment under section 27(1) of the Criminal Code (WA), admitting the physical acts underlying each charge.

The accused had an undisputed diagnosis of ASD. Dr Adam Brett gave expert psychiatric evidence for the defence, diagnosing a psychotic disorder. Dr Siva Bala gave evidence for the State, diagnosing an unspecified psychotic disorder. Both experts agreed the accused had ASD and a paedophilic disorder.

MacLean DCJ held that both psychosis and ASD are mental illnesses within the Criminal Code definition. He accepted the accused had been suffering from a psychotic disorder at the time of the offending, but was not satisfied on the balance of probabilities that the disorder had "completely deprived" the accused of capacity to control his actions or to know he ought not to do the acts. The accused's conduct after the offences, including lying to police, disposing of tape, and soothing the child, was inconsistent with the claim of an advanced delusional belief system.

The court noted explicitly that "it was not contended that ASD accounted for the deprivation of the capacities." This matters. It shows that the current framework treats ASD as background context rather than as a primary basis for the mental impairment defence, even in cases where ASD materially affects how psychosis presents and how the person processed their situation.

The case reveals a significant gap. People with both ASD and psychosis present differently from people with psychosis alone. ASD can mask psychotic

symptoms, produce unusual behaviour after an offence, and create presentations that do not fit the expected clinical picture of severe psychosis. Forensic assessors trained primarily in psychiatric frameworks may not have the expertise to assess these interactions accurately. The result is that the people who most need the mental impairment framework's protection may be the least able to access it.

6.3 Mack v State of Western Australia [2014] WASCA 207: ASD and Credibility

Mack v State of Western Australia [2014] WASCA 207 was decided by the Court of Appeal (Martin CJ, Buss JA, and Mazza JA) on 10 November 2014. Brent Donald Mack was convicted of murdering his mother, whose body was never recovered. The trial judge found that Mack had ASD, described as high-functioning or pervasive autism, and accepted this amounted to a mental impairment under the 1996 Act. The trial judge still found Mack fit to stand trial.

The appeal raised the question of whether Mack's false statements and shifting accounts, which the trial judge treated as showing consciousness of guilt, could instead be explained by autism. This is a well-documented ASD vulnerability. Autistic people may produce false, inconsistent, or shifting accounts under stress, not because they are guilty or trying to deceive, but because of literal interpretation of questions, difficulty with the social dynamics of interrogation, and vulnerability to leading questions.

The Court of Appeal rejected the argument, finding the trial judge had properly considered the unusual personality and rejected alternative explanations. The court acknowledged that autism made Mack vulnerable in prison and affected how he would experience custody. However, the court did not address whether reasonable adjustments had been made to the trial process itself.

The case shows a fundamental access to justice failure. Without a framework that requires courts to consider whether ASD-related communication differences

may produce behaviour that looks like, but is not, consciousness of guilt, autistic accused will keep being disadvantaged by processes designed for neurotypical people. The absence of a communication partner in pre-trial proceedings, where autistic people are most vulnerable to having their communication misread, is a structural gap.

6.4 State v ADJ [2026] WASC 224: ASD, Paedophilia, and Culpability

State of Western Australia v ADJ [2026] WASC 224 concerns sentencing for paedophilic offences with a community sexual management order component. The case engages the interaction between paedophilic disorder as a clinical diagnosis and criminal culpability, and the role of specialist treatment under NDIS or forensic mental health frameworks.

Allely and Creaby-Attwood (2019) analysed Australian criminal cases involving defendants with ASD and online sexual offences. They found that ASD features, including lack of understanding of social norms, poor social communication skills, and obsessive behaviour, were relevant to how online child exploitation offending developed. They found that Australian courts had begun recognising these features as relevant to culpability but that a consistent framework was lacking.

A leading systematic review developed the underlying clinical case more fully. Allely and Dubin (2018) argue that for a subset of autistic people, an obsessive collecting drive combined with social naivety, online disinhibition, and impaired appreciation of victim harm can lead to possession of illegal material without paedophilic intent, and that education and treatment, rather than custody, best serve justice in those cases. This draws on the counterfeit deviance concept, which distinguishes behaviour arising from developmental and knowledge deficits from genuine deviant interest (Griffiths et al., 2013). A case-control study found that circumscribed interests were significantly more likely to have contributed to the index offence among autistic offenders (Woodbury-Smith et al., 2010).

Standard actuarial risk tools, which weight factors such as relationship history, can systematically inflate risk scores for autistic defendants and may push outcomes towards custody where treatment would better serve justice (Creaby-Attwood & Allely, 2017).

SWAN submits that the Commission should recommend developing an explicit autism-informed culpability and assessment framework for sexual offence matters involving autistic defendants. This framework should address: (a) the relevance of ASD to the formation and persistence of offending behaviour, including the counterfeit deviance pathway; (b) the limitations of standard sex offender treatment programmes designed for neurotypical participants; (c) appropriate supervision conditions that are both effective and capable of being complied with by an autistic person; (d) the limitations of standard actuarial risk tools when applied to autistic defendants; and (e) how NDIS-funded supports interact with those conditions.

6.5 Hoolash v The King [2026] WASCA 61: Online Extremism, ASD, and Terrorism Sentencing

Hoolash v The King [2026] WASCA 61 was decided by the Court of Appeal (Quinlan CJ, Thomson P, and Seaward JA) on 1 May 2026. The appellant was 18 at the time of the offending. He administered a public Telegram group and Instagram account through which he posted more than 90 written posts and around 337 voice recordings containing Islamic extremist rhetoric glorifying ISIS and Hamas. He was sentenced to three years' imprisonment.

ASD was not diagnosed in Hoolash himself. The case is relevant because the court expressly compared his case with *The King v Fletcher*, which involved a 26-year-old man with ASD, ADHD, and body dysmorphia. In Fletcher, the court gave weight to the autism-mediated nature of the fixation. The comparison shows an emerging but inconsistent framework: WA courts will treat ASD-related fixation differently from ideologically-motivated extremism, but require careful

assessment of whether a defendant's engagement with extremist material is ideologically genuine or disability-mediated.

The court noted there was no neurodevelopmental assessment for Hoolash, even though the clinical psychologist described him as "grossly immature" with significant lack of insight. This is a significant gap. The vulnerability of young people, particularly those with unrecognised neurodevelopmental conditions, to online influences is well documented. A neurodevelopmental assessment at the earliest stage of proceedings would have allowed a more careful analysis of Hoolash's culpability. The absence of that assessment is a structural failure.

The Commission should also note that the evidence base around autism and terrorism does not support a propensity link. The foundational forensic framework states plainly that there is no empirical evidence linking autism and terrorism in the general population (Al-Attar, 2020). A 2025 systematic review of 93 publications found no direct causal link, and observed that autism appears under-represented in group-based terrorism, suggesting some autistic traits may be protective (Salman & Al-Attar, 2025). A rapid evidence assessment rated 22 of 26 studies at the lowest evidence level and concluded that autism in itself is not a risk factor for radicalisation (Worthington et al., 2022). A Campbell Collaboration meta-analysis found diagnosed mental disorder in terrorist samples at 17.4%, which is lower than the general population rate, and did not support a mental health to terrorism hypothesis (Sarma, Cox & Carthy, 2022). The apparent over-representation of autism in some lone-actor samples reflects selection effects and referral bias, not propensity (Corner et al., 2016). Reported autism rates in incel communities, ranging from roughly 18% to 40%, come almost entirely from self-report online surveys and retrospective diagnosis after violence, and must be treated with caution: they do not show that autism causes incel beliefs or violence (Vespermann & Tirkkonen, 2023).

Where autism does feature in such cases, it is a contextual vulnerability operating alongside isolation, trauma, and co-occurring conditions, not a cause. The implication for WA reform is that neurodevelopmental assessment is needed

not to confirm a presumed link to extremism, but to do exactly the opposite: to allow courts to assess whether a young defendant's engagement with extremist material reflects disability-mediated fixation, social isolation, and learned compliance, rather than ideologically-motivated commitment.

For Project 115, *Hoolash* shows the need for mandatory neurodevelopmental screening at the point of charge for young offenders, so that courts can distinguish disability-mediated engagement with extremist material from ideologically-motivated offending.

6.6 Coveney v State [2026] WASCA 20: Youth, ASD, ADHD, and Rehabilitation

Coveney v State of Western Australia [2026] WASCA 20 was decided by the Court of Appeal (Hall JA, Archer JA, and Sweeney JA) on 19 February 2026. The appellant was born 20 January 2005 and was 18 years and 3 months old when he committed aggravated home burglary and assaults causing bodily harm in a vigilante attack. He had diagnoses of severe ADHD and ASD.

The District Court imposed a total effective sentence of six years' imprisonment. The Court of Appeal reduced this to four years, finding the original sentence was excessive given the appellant's youth and neurodevelopmental conditions.

The Court accepted that ASD and severe ADHD were relevant mitigating factors. Impaired impulse control and emotional regulation, which are features of both ASD and ADHD, contributed to the offending and warranted a lower sentence. Youth and disability together reduced moral culpability and the utility of general deterrence. The court acknowledged that custody would be harder because of his disability.

However, the court noted that the mitigating effect of ASD and ADHD was reduced by the absence of direct causation. The indirect/direct causation distinction is an area of persistent tension in sentencing for autistic accused. Autism and ADHD do not "cause" specific offences in the way that, for example,

a command hallucination might. They shape the context: impaired impulse control, difficulty predicting consequences, emotional dysregulation, and vulnerability to peer influence all contribute to offending in ways that are disability-related without being the determining cause. The law's requirement for causal proximity risks under-weighting disability as a mitigating factor in exactly the cases where it is most relevant.

The Verdins principles (*R v Verdins* [2007] VSCA 102), applied by analogy in WA cases including *Knott v Roberts* [2010] WASC 267, provide that: (a) mental impairment may reduce the moral culpability of the offending; (b) mental impairment may make the offender a less appropriate vehicle for general deterrence; (c) mental impairment may make a custodial sentence more burdensome; and (d) mental impairment may reduce the risk of re-offending. *Coveney* applies these principles in a contemporary ASD/ADHD context.

SWAN submits that Western Australia needs explicit legislative guidance on how disability is relevant to: (a) culpability; (b) general deterrence, which applies far less to autistic accused; (c) sentence severity, following the Verdins principles; (d) whether supervision conditions are feasible; and (e) post-sentence frameworks. Without that guidance, outcomes will remain inconsistent and unjust.

6.7 State v Hoskin [No 3] [2025] WASC 318: NDIS, CSAM, and Supervision Failure

State of Western Australia v Hoskin [No 3] [2025] WASC 318 was decided by Strk J on 8 August 2025. Jason Hoskin had a long history of child sexual abuse material (CSAM) offences. He was placed on a supervision order under the High Risk Serious Offenders Act 2020 (WA) in March 2024. Within months he had committed 75 contravention offences, including accessing the internet without authorisation, possessing concerning images, and deleting data. His NDIS providers had disengaged.

Dr Bannister diagnosed ASD in Hoskin and identified it as contributing to egocentric behaviour and failure to consider consequences. The court found that detention was necessary for community protection. It noted that no meaningful changes to supervision conditions had been identified that would manage risk effectively.

This case shows the fundamental tension between the aspirational model of NDIS-funded community integration and the coercive reality of criminal justice supervision for autistic people with entrenched patterns of offending. The NDIS framework includes supports in supervision order conditions, but has no effective mechanisms to compel meaningful NDIS participation. When an autistic person with a CSAM history disengages from NDIS providers, there is no bridge between the disability support system and the criminal justice supervision system that can respond effectively. If they are no longer funded to comply with parole requirements, there is nobody to support them in the community, which increases the chances of recidivism, or offending.

SWAN submits that the joint planning obligation between CLMIA supervision and NDIS planning, recommended in Section 12, must also extend to HRSO supervision orders. The current system creates conditions for supervision failure that are structural, not individual.

6.8 State v Raven [2026] WASC 57: Fifty Years of Fixation and No Pathway

State of Western Australia v Raven [2026] WASC 57 was decided by Quinlan CJ on 3 March 2026. Victor Redvers Raven, aged 69, was the subject of proceedings under the High Risk Serious Offenders Act 2020 (WA) following his most recent conviction for wilfully lighting a fire. His history stretched back to fires set at Albany Senior High School in 1972, 1973, and 1977. He was found not guilty on grounds of unsoundness of mind at his first trial and spent over a

decade in custody at the Governor's pleasure. After release, he accumulated 13 further convictions for fire-related offences.

Dr Bala diagnosed schizotypal personality disorder, with secondary diagnoses of mild intellectual disability and possible ASD. The court declined an interim detention order, finding risk was manageable in the community with appropriate supervision, NDIS support, and support from his brother. The court acknowledged that the inability to compel treatment, because Raven had not been diagnosed with a qualifying mental illness, was a key limitation on managing risk.

Raven's case is extraordinary. A man who has been setting fires since 1972, who spent over a decade detained without trial, who has never received adequate treatment for his underlying conditions, continues to cycle through the justice system at age 69. The Albany Senior High School fixation, which has persisted for over 50 years, is almost certainly an expression of an unaddressed neurodevelopmental condition that the criminal justice system has never been equipped to treat. Fifty years of incarceration and supervision have not addressed the underlying need.

This is the logical endpoint of a justice system that treats disability as a behaviour management problem. It is a powerful argument for investment in early identification, appropriate support, and trauma-informed therapeutic engagement, rather than a revolving door of custody, release, and re-entry.

6.9 Knott v Roberts [2010] WASC 267: Prohibition Orders and Proportionality

Knott v Roberts [2010] WASC 267 was decided by Murray J on 16 September 2010. Trevor Knott, aged 25 with ASD and borderline intellectual disability (IQ just under 70), was convicted of failing to comply with child protection prohibition orders. The offences involved being present at or near public transport facilities outside permitted hours.

Murray J reduced the sentences on appeal, finding the cumulative total was excessive given the nature of the breaches: passive presence near public transport with no contact with any person, and the appellant's disability. The court noted that the offending was causally related to the appellant's mental disability, which reduced the appropriateness of general deterrence. The court applied the Verdins principles: disability reduces moral culpability and the utility of general deterrence, and makes imprisonment harsher.

The case shows a systemic failure in the design of prohibition orders for people with ASD and intellectual disability. Orders designed for neurotypical offenders impose disproportionate restrictions on people whose disability affects their understanding of spatial and time-based compliance requirements. An autistic person who understands that they must not contact children may not understand a prohibition on being within a certain distance of a train station at certain hours, particularly when public transport is their primary means of accessing services.

The case also shows the access to justice failure created by disability-related inability to meet the 28-day appeal deadline. Knott only became aware of his appeal rights when he was denied parole. An extension of time was granted. This illustrates how every part of the legal system, including the post-conviction appeal framework, assumes neurotypical capacity that autistic people with intellectual disability may not have.

6.10 Lilley [2019] WASCA 164: Victim Vulnerability and Autism

Lilley v State of Western Australia [2019] WASCA 164 was decided by the Court of Appeal (Buss P, Mazza JA, Beech JA) on 22 October 2019. This case involved the murder of Aaron Lee Pajich. The formal admissions described him as having "some level of autism" that made him, "to some extent, trusting and vulnerable." Lilley and her co-accused Trudi Lenon were convicted of murder.

The appeal concerned propensity evidence and the admission of a co-accused's evidence. The autism and associated vulnerability were part of the admitted facts but were not the central legal issue. The case matters for this submission because it is one of very few WA cases where autism is explicitly identified as a characteristic that made the victim specifically vulnerable and was exploited by perpetrators.

SWAN members supported the victim's family through the court process. Trudi Lenon worked at Aaron's school in an administrative role, and he had no reason to distrust her. Another feature that was peculiar in this case was that Aaron was almost immediately missed. Aaron was lodging at a house in Waikiki. His landlady overheard the phone call from Trudi Lenon, then drove Aaron to Rockingham Centre. He was later reported missing after he did not return to the house. This is relatively unusual for those who are socially isolated – many autistic victims of crime, especially older people, are not missed for a significant amount of time.

It was also pertinent that Lilley herself was reportedly diagnosed as a child with dyslexia and autism, before being rediagnosed as an adult with a personality disorder. Her mother was institutionalised early in her life with schizophrenia.

Neither the trial nor the appeal examined whether criminal justice processes adequately address the victimisation of autistic people targeted specifically because of their disability. Aaron's autism was foundational to how the crime occurred. The absence of any disability law analysis in this context shows how the justice system treats the disability-related victimisation of autistic people as background context rather than as a systemic issue requiring a systemic response.

Section 7: Autistic People as Victims, Witnesses, and Complainants

7.1 Victimisation

The peer-reviewed evidence points in one direction. Autistic people interact with the criminal justice system overwhelmingly as victims of crime, not as perpetrators. A systematic review and meta-analysis of 34 studies found a pooled victimisation rate of 44%, rising to 84% in studies that measured several forms of harm at once (Trundle et al., 2023). The Commission should treat this finding as the starting point for any reform aimed at autistic people's access to the justice system.

The Disability Royal Commission Final Report documented that 55% of people with disability aged 18 to 64 have experienced physical or sexual violence since the age of 15, compared with 38% of people without disability, and that people with cognitive and psychological impairments report the highest rates of all forms of violence (DRC, 2023, Vol. 3). In 81% of cases the perpetrator is known to the victim (DRC, 2023, Vol. 3).

Australian autism-specific data tell the same story. A Macquarie University and Black Dog Institute study using the Australian Bureau of Statistics Personal Safety Survey instrument found that 56.8% of autistic adults reported sexual violence since age 15, compared with 28.2% of non-autistic adults, 58.5% reported physical violence, and 76.3% reported multiple types of violence (Gibbs, Hudson & Pellicano, 2023). A French study of autistic women found 88.4% reported sexual victimisation on a standardised measure (Cazalis et al., 2022). Autistic adults are also significantly less likely than others to have told anyone about what happened to them (Gibbs et al., 2021).

Financial exploitation follows the same pattern. A Cambridge study found that almost half of autistic adults reported being tricked or pressured into giving

someone money or possessions, against 20% of non-autistic adults, and a UK National Trading Standards analysis found neurodivergent people were 50% more likely to have been a fraud victim (Carter, 2025).

For autistic people, specific vulnerability factors include: social naivety and high trust; difficulty identifying when a situation is unsafe; difficulty disclosing and reporting abuse; learned compliance; and reliance on support workers and carers who may themselves be perpetrators (Bunning et al., 2022). Bullying is a lifespan experience. Up to 63% of autistic people report being bullied at some point, and autistic children are around 2.4 times more likely to be bullied than peers (Daghustani et al., 2025). Loneliness partially mediates the link between autistic traits and poor mental health (Schiltz et al., 2021).

The Aaron Pajich case shows that autism-related social trust can be directly exploited by perpetrators who target autistic people because of their vulnerability. Without a disability-aware criminal justice response to the victimisation of autistic people, perpetrators face reduced accountability, victims receive less support, and the systemic pattern goes unaddressed.

DRC Recommendations 8.23 and 8.24 required governments to develop action plans to end violence against women and children with disability, and to amend legislation to include disability-inclusive definitions of family and domestic violence that capture violence by disability support workers. Western Australia responded cautiously, with “subject to further consideration” positions on Recommendation 8.24.

7.1A Mate Crime and the Exploitation of Friendship

Mate crime is a distinct form of exploitation in which a perpetrator builds a false friendship in order to abuse it. The term was developed by the UK Association for Real Change after the murder of Steven Hoskin, an intellectually disabled man tortured and killed by people he believed were his friends (ARC England, 2024).

Academic work frames it as “exploitative familiarity”, sitting in the gap between hate crime, safeguarding, and fraud frameworks, none of which capture it well (Doherty, 2019). The first empirical study with autistic adults found that participants understood the concept of mate crime but were unsure whether they could recognise it in their own lives (Forster & Pearson, 2020). Disability hate crime is massively under-reported, with estimates that up to 98% goes unreported (ARC England, 2024).

The same social vulnerabilities that make autistic people targets of exploitation, including a desire for friendship, high trust, learned compliance, and difficulty reading intent, also create a risk that autistic people will be manipulated by others into participating in offending behaviour (Bunning et al., 2022). This pathway has direct implications for sentencing and culpability.

In Western Australia, mate crime has no clear legal home. It does not fit neatly within new hate crime frameworks, within fraud provisions, or within the family and domestic violence framework. Disability-targeted exploitation by people posing as friends, neighbours, or carers is a recognisable pattern in WA cases including the Pajich murder, in coronial inquests where exploitation preceded preventable death, and in safeguarding failures involving NDIS workers. SWAN submits that the Commission should examine, as part of its access to justice work, whether existing aggravating-factor provisions in WA sentencing law adequately capture offences that target disabled people because of their disability, including through exploitative familiarity. The Commission may wish to consider whether explicit recognition is warranted, drawing on the Disability Royal Commission’s victimisation findings and the peer-reviewed evidence above.

7.2 State v CA [No 6] [2026] WASC 124: FDV and the Autistic Victim

State of Western Australia v CA [No 6] [2026] WASC 124 was decided by Cobby J on 10 April 2026. This case involved a mandatory review of a continuing detention order under the High Risk Serious Offenders Act 2020 (WA). The respondent had a history of serious sexual and violent offending against intimate partners. His current partner, Ms KM, was identified as having bipolar disorder and mild autism. Her disability was specifically flagged as a risk factor in the assessment of the respondent's future conduct.

The court rescinded the continuing detention order and made a three-year supervision order, adding a condition requiring the respondent to notify his community corrections officer of any change in occupants within 48 hours.

The case reveals the double vulnerability of a disabled victim in HRSO proceedings. Ms KM's mild autism and bipolar disorder were noted as risk factors for the respondent's management. However, there is no indication that she received independent support, information about risks, or communication accommodation to help her make fully informed choices about the relationship. The HRSO framework pays appropriate attention to victim safety in the aggregate, but has no mechanisms to directly support or assess a specific identified partner with disability.

This gap matters. An autistic victim of intimate partner violence faces barriers at every stage of the justice process: in recognising that what is happening is violence; in communicating effectively with police; in participating in coronial, criminal, or HRSO proceedings; and in receiving safety planning that accounts for her disability. Without a communication partner or intermediary available to victims, these barriers are built into the system.

7.3 Communication Barriers in Policing

The primary barrier for autistic victims seeking police assistance is communication. Autistic people may respond to police questions literally, may not understand that they are being invited to disclose violence, may appear calm or flat-affected in circumstances that police interpret as showing no distress, and may not volunteer information that they do not understand to be sought. Police trained for neurotypical interaction patterns will routinely misread these presentations.

DRC Recommendation 8.20 required governments to take steps to improve police responses to people with disability. This includes adopting national minimum standards and consistent frameworks for police training on disability, ensuring police call-out responses better identify and respond to the needs of people with disability, and establishing a data collection system to allow analysis of interactions between police and people with disability. WA accepted this recommendation in principle.

However, accepting a recommendation in principle is not the same as putting it in place. The DRC's 2025 Progress Report confirms that Recommendation 8.20 remains "in progress," with no completed implementation across any jurisdiction.

7.4 Credibility Assumptions

Autistic people giving evidence in court face credibility challenges that come directly from autism-related communication differences. Atypical eye contact, flat or inconsistent affect, literal responses to questions, difficulty with narrative coherence under questioning, and sensitivity to sensory overload in a courtroom can all lead juries and judicial officers to discount an autistic witness's evidence.

The disadvantage begins with how others perceive autistic people, not with what autistic people say. In the landmark thin-slice study, non-autistic observers formed less favourable impressions of autistic people within seconds, were less willing to interact with them, and did not change their views with repeated

exposure, yet the bias disappeared when judgements were based on a transcript alone. This shows that communication style, not content, drives the effect (Sasson et al., 2017). Those negative impressions improve when raters are accurately informed of the autism diagnosis (Sasson & Morrison, 2019). This is the double empathy problem in action: misunderstanding is mutual and relational, not a one-sided deficit on the autistic person's side (Milton, 2012). It explains why autistic people are routinely misread by police, counsel, jurors, and judicial officers, and it provides the evidence base for the proposition that disclosure and explanation of autism to court actors materially improves credibility assessment.

Mack v State of Western Australia [2014] WASCA 207 shows the reverse problem: an autistic accused whose false and shifting accounts were treated as showing consciousness of guilt rather than as ASD-related communication under stress. The same dynamic applies for autistic victims, whose communication differences may be read as showing unreliability rather than as features of a disability that courts are obliged to accommodate.

Intermediary schemes can directly address these credibility assumptions by helping courts and juries understand that atypical communication in an autistic person does not mean they are unreliable. An intermediary can explain to a court, before evidence is given, the specific communication features of the autistic person involved and how they should be understood.

7.5 The Case for a Comprehensive Intermediary Scheme

SWAN submits that Western Australia needs a comprehensive intermediary scheme, modelled on but expanding the existing Communication Partner Programme and drawing lessons from the ACT Intermediary Program, that:

(a) covers all autistic and otherwise neurodivergent people in all legal proceedings, regardless of whether they are accused, victim, witness, or other party;

(b) is set out in legislation, not left to administrative discretion;

(c) is available from the first moment of police contact, including during investigative interviews, not only at trial;

(d) is adequately resourced with trained intermediaries drawn from speech pathology, occupational therapy, psychology, and social work; and

(e) includes a mechanism for courts to be informed about a person's specific communication needs before evidence is given.

This is the minimum standard required by CRPD Article 13, UN Access to Justice Principle 3, and DRC Recommendations 8.11 and 8.14.

Section 8: Guardianship, Legal Capacity, and State Administrative Tribunal Decisions

8.1 Introduction: The Legal Architecture of Substitute Decision-Making

The Guardianship and Administration Act 1990 (WA) (GAA) sets up a framework for appointing guardians and administrators for adults who need help with personal and financial decisions. The State Administrative Tribunal (SAT) exercises the Tribunal jurisdiction under the Act. The Public Advocate is an independent statutory officer created under the Act to promote and protect the rights of adults with decision-making disabilities.

Like most Australian states, WA's guardianship framework is built on substitute decision-making: a guardian or administrator is appointed to make decisions on behalf of the represented person, based on their "best interests." This is the model that CRPD Article 12 and General Comment No. 1 require to be replaced with supported decision-making.

The LRCWA Project 114 review of the GAA produced a Final Report released in early 2026 (LRCWA, 2026). Key recommendations include making supported decision-making the preferred approach, with decisions reflecting a person's wishes and preferences; putting support measures for SAT hearings into legislation; and removing "gag laws" that have been identified as the strictest in Australia in terms of preventing individuals from publicly sharing their own experiences (ABC News, 2026).

Project 115 must address how the guardianship and supported decision-making reforms recommended in Project 114 apply at the criminal-civil interface, for people who are simultaneously subject to guardianship orders, CLMIA supervision orders, and NDIS plans.

8.1A The CRPD Framework: General Comment No 1 and the Will-and-Preferences Paradigm

The CRPD Committee's General Comment No 1 (CRPD/C/GC/1, 2014) (GC1) explains in detail what Article 12 requires of States Parties. Several passages are central to evaluating the WA guardianship system and are quoted here in full so that the standard the GAA must meet is clear.

At paragraph 7, GC1 identifies the conceptual mistake underlying traditional capacity regimes: "Mental capacity is not, as is commonly presented, an objective, scientific and naturally occurring phenomenon. Mental capacity is contingent and is not, as is presumed in many legal systems, a reliable constant … [T]hese tools actually create the problem they purport to solve, for when legal capacity is removed from a person under such paradigms, it is often justified by the fact that the person has impaired mental capacity."

At paragraph 12, GC1 distinguishes legal capacity from mental capacity: "Legal capacity is the ability to hold rights and duties (legal standing) and to exercise those rights and duties (legal agency). It is a universal attribute inherent in all persons by virtue of their humanity and must be upheld for persons with disabilities on an equal basis with others."

At paragraph 13, GC1 sets out the standard the CRPD requires: "The 'will and preferences' paradigm must replace the 'best interests' paradigm to ensure that persons with disabilities enjoy the right to legal capacity on an equal basis with others. Signing on behalf of or in the name of a person with disability must be changed to one of providing support to exercise legal capacity, including support to understand information and to make choices."

At paragraph 15: "Support in the exercise of legal capacity must respect the rights, will and preferences of persons with disabilities and should never amount to substituted decision-making."

At paragraph 21, GC1 sets out the abolition obligation: “All forms of substitute decision-making must be abolished. This includes guardianship, trusteeship, and other substitute decision-making systems, as well as all forms of disability-specific substitute decision-making.”

At paragraph 28: “States parties’ obligation to replace substitute decision-making regimes by supported decision-making requires both the abolition of substitute decision-making regimes and the development of supported decision-making alternatives. The development of supported decision-making systems in parallel with the maintenance of substitute decision-making regimes is not sufficient to comply with article 12 of the Convention.”

At paragraph 29: “A supported decision-making regime comprises various support options which give primacy to a person’s will and preferences and respect human rights norms.”

These paragraphs together define the gap between the current WA framework and CRPD compliance. The GAA, however carefully SAT members apply it, cannot close that gap without structural amendment. The cases that follow show how the substitute decision-making framework operates. They also show that individual SAT members have consistently tried to give weight to represented persons’ expressed views, even within the constraints of the existing Act. Members have repeatedly identified the structural limitations of the current legislation. The direction of reform is clear. What is needed is legislative action.

The DRC, in Recommendation 6.6, called on all Australian governments to embed ten supported decision-making principles in their legislative frameworks: autonomy; non-discrimination; participation; dignity; individual support; safeguards against undue influence; access; accountability of support providers; flexibility of support arrangements; and recognition across all settings. Western Australia accepted Recommendation 6.6 in principle, noting that implementation depends on the LRCWA Project 114 review. The LRCWA Project 114 Final Report (2026) has now recommended that supported decision-making be put into

legislation. Project 115 should treat Project 114's recommendations as the minimum starting point for guardianship reform at the criminal-civil interface.

8.1B The GG Line: Binary Capacity and the Structural Default to Substitute Decision-Making

The most important body of recent SAT case law on legal capacity is the series of decisions about GG: *GG* [2020] WASAT 54, *GG* [2021] WASAT 133, and *GG* [2024] WASAT 11. GG is a man with autism spectrum disorder, intellectual impairment, language impairment, and severe anxiety. He has been the subject of guardianship proceedings for more than a decade. The persistence of those proceedings, and what they reveal about the structural defaults of the GAA, is central to this submission.

GG [2021] WASAT 133 (Dr B McGivern, Member, 29 September 2021) is the leading single-member decision on how section 43 of the GAA applies. Dr McGivern's reasons give the clearest analysis of how the three limbs of s 43(1)(b) operate and how capacity relates to the expression of views. At [54]–[60], the Tribunal held that the first limb addresses functional incapacity to look after one's own health and safety, while the second limb is about inability to make reasonable judgments on personal matters. At [62]–[63], the Tribunal drew the critical distinction between expressing views and having legal capacity:

The more specific ability of a person to make particular decisions, or to express their views and wishes about those decisions, is catered for by various other features and requirements of guardianship under the GA Act … a distinction is to be drawn between, on the one hand, a person's ability to: (i) make some specific, limited decisions about personal matters; and (ii) to arrive at and convey views and wishes about matters relevant to their personal wellbeing; and, on the other hand, capacity, which is a broader assessment.

At [88], the Tribunal acknowledged that where informal arrangements for accommodation and medical treatment are working, guardianship orders are not

needed for those matters. The system only intervenes where informal supports fail or where NDIS navigation requires it. This is a careful and reasoned approach within the GAA's framework.

The limitations, however, are structural rather than judicial. The GG line shows that the GAA operates within a binary framework that GC1 paragraph 7 identifies as incompatible with Article 12. Once the presumption of capability in s 4(3) is overturned on a global capacity assessment, the only formal response available is a substitute decision-making order. The GAA does not allow SAT to establish a structured supported decision-making agreement as an alternative to guardianship. It does not require the Tribunal to be satisfied, before making a guardianship order, that supported decision-making arrangements have been tried and found inadequate. It does not provide a graduated, time-limited supported decision-making trial as a less restrictive alternative.

The Full Tribunal in *GG* [2024] WASAT 11 (President Pritchard, Ms J de Klerk, Member; Ms V Haigh, Member) affirmed the framework from GG [2021] WASAT 133. The proceedings were a review brought by GG's mother. The Full Tribunal dismissed the review and affirmed the appointment of the Public Advocate as limited guardian and the Public Trustee as plenary administrator. At [80], the Full Tribunal found that GG also has an intellectual impairment, in addition to autism and language impairment. At [245]–[246], the Full Tribunal recorded GG's expressed views: he stated a preference for a particular support worker, said that sincerity was important to him, said he was happy where he was living, and felt "all right" about being assessed by a doctor. Those views were treated as meaningful evidence of his preferences, consistent with the GG [2021] WASAT 133 framework. But the outcome, that is, appointment of public officials as guardian and administrator, is exactly the kind of substitute decision-making that GC1 paragraph 21 requires to be abolished.

The GG line has three systemic implications. First, the same person can be subject to formal proceedings for more than a decade, with each round of litigation responding to the breakdown of informal arrangements rather than to

any deterioration in the person. The proceedings themselves are not therapeutic or constructive. Second, the all-or-nothing approach to capacity, built into s 43, means that a diagnosis of intellectual impairment opens the door to a substitute regime, with no mechanism for graduated support. As GC1 paragraph 7 puts it, the legal framework "creates the problem [it] purports to solve." Third, the role of public officials as default appointees, where family or informal supports are unavailable or contested, means the represented person's life becomes subject to bureaucratic processes that are inherently distant from their will and preferences.

MRY [2025] WASAT 145, discussed at section 8.4 below, completes the picture: where the represented person cannot communicate verbally, the Tribunal has no mechanism for finding out their will and preferences, no provision for an independent communication-needs assessment before making a guardianship order, and no formal structure for supported decision-making within which to operate. The GG line and MRY together show that the GAA, as currently drafted, cannot deliver Article 12 compliance no matter how carefully its provisions are applied. Legislative reform is required.

8.2 JN and TD [2016] WASAT 9: Forced ECT and the Authority of a Guardian

JN and TD [2016] WASAT 9 concerned TD, a 28-year-old man with ASD as a primary diagnosis, bipolar disorder, catatonia, and severe challenging behaviours. His mother had been his plenary guardian since 2007. The case concerned a challenge to the guardianship order and, critically, what authority a guardian has in relation to ECT.

The Tribunal clarified that under the Mental Health Act 2014 (WA), for an involuntary patient, ECT approval is not within a guardian's authority: it must be approved by the Mental Health Tribunal (sections 409-415 of the Mental Health

Act 2014 (WA)). The guardian's role is to advocate in that process, not to consent.

This is a significant access to justice finding. The Mental Health Tribunal acts as an independent safeguard against the use of ECT without appropriate review. For an autistic person with comorbid bipolar disorder and catatonia, the distinction between a guardian's authority (which is extensive, covering most personal decisions) and the Mental Health Tribunal's independent oversight function (required for ECT) provides a layer of protection for one of the most invasive psychiatric interventions.

However, the case also shows the absence of adequate mechanisms for TD himself to take part meaningfully in decisions about his own treatment. TD had profound communication difficulties as well as behavioural challenges. The conflict between his parents, who fundamentally disagreed about his treatment, was managed through adversarial proceedings rather than through a supported decision-making framework that would have placed TD's own will and preferences at the centre.

The dual-framework problem, with disability law under the GAA and mental health law under the MHA 2014 splitting authority for different types of decisions across different bodies, means that families and represented persons must navigate multiple tribunals and frameworks to get coherent outcomes. Without legal assistance, this is inaccessible for most people.

8.3 CH [2024] WASAT 31: Long-Standing Informal Care and Bureaucratic Disruption

CH [2024] WASAT 31 concerned a 46-year-old non-speaking man with an intellectual disability who had worked part-time at a department store for nearly 22 years. His mother DH had been his informal substitute decision-maker throughout his adult life. The case arose because a Centrelink vaccination

certificate correction was blocked when Centrelink required a formal administrator, not an informal carer, to authorise the correction.

The Tribunal, on review, appointed DH as private administrator, finding this best served CH's overall interests. CH attended the hearing and pointed to DH when asked who he wanted to manage his income. His gesture was treated as meaningful evidence of his preference.

The case shows how administrative systems that require formal legal authority can disrupt and burden informal caring arrangements that are working well. The intervention of the Public Trustee, whose investigation into the property ownership of the jointly-held mortgaged home created unnecessary complexity and cost, shows the disproportionate burden the formal guardianship system places on families of people with intellectual disability.

For Project 115, the case argues for a simplified, non-adversarial pathway for families who are managing well and who only need formal legal authority to navigate administrative systems, without the full weight of Tribunal guardianship proceedings.

8.4 MRY [2025] WASAT 145: Supported vs Substitute Decision-Making for Profoundly Disabled Adults

MRY [2025] WASAT 145 concerned MRY, an 18-year-old man with profound autism, moderate intellectual disability, and global developmental delay. His parents were separated and in conflict over almost every aspect of his care. A dissenting member found the risk to MRY's mother from his father made sole family appointment inappropriate.

The case directly engages the CRPD Article 12 tension between supported decision-making and substitute decision-making. MRY could not attend or express preferences. His views were not gathered at any point, not through his

NDIS plan, the OPA investigator's report, or the hearing. This reflects a structural gap in how the system finds out the wishes of profoundly non-speaking people.

The CRPD General Comment No. 1 at paragraph 29 says that a non-conventional mode of communication is not a barrier to support. MRY's inability to communicate verbally does not mean he lacks will and preferences. It means the system needs better tools for identifying and expressing those preferences. Tools such as systematic behavioural observation over time, involvement of trusted long-term carers, and NDIS-funded communication assessment are not built into the Tribunal's process.

There is no mechanism, comparable to a supported decision-making agreement under the reform models recommended by the CRPD Committee and DRC, that would allow MRY's networks, staff, and family to collaboratively support decision-making without adversarial proceedings. Project 115 should recommend that the guardianship reforms proposed in Project 114 be put in place urgently, and that specific mechanisms be developed for the most profoundly disabled adults who cannot take part in conventional Tribunal processes.

8.4A CK [2025] WASAT 27: Coercive Control, Advance Health Directives, and Fluctuating Capacity

CK [2025] WASAT 27 (Judge H Jackson, Deputy President) concerned a 63-year-old man with autism spectrum disorder and schizophrenia (diagnosed in 2024). CK's mother, who had been his primary carer, died suddenly in late 2022. Between her death and his hospitalisation in August 2024, CK signed an Enduring Power of Attorney appointing his sister EK as his attorney, and an Advance Health Directive (AHD) that included consent to take part in medical research. In August 2024, CK was admitted to hospital after a serious mental health decline; he had been hearing voices telling him to stop taking his

medication. The hospital found that CK had given significant funds to EK since their mother's death. Concerns arose about financial abuse and coercive control.

The Tribunal made three significant findings. First, CK lacked capacity to sign the AHD at the time he signed it in November 2023. His ASD, recently emerged schizophrenia, and bereavement meant he could not understand the implications of consenting to research participation. Second, the Tribunal took CK's own oral evidence directly and gave it weight: at [14], CK told the Tribunal that he did not want to take part in medical research where he would receive a placebo, and that he wanted to be "switched off" if medical treatment could not help. Third, the Tribunal revoked the EPA because of concerns about EK's financial conduct and the coercive control dynamic. The Public Advocate was appointed as guardian with additional functions; the Public Trustee was retained as administrator.

CK raises three issues central to this submission. First, the adequacy of advance decision-making frameworks where a person with ASD and fluctuating mental health signs a complex legal document during a period of vulnerability. The AHD framework assumes a stable decision-maker; the lived reality of co-occurring autism and mental illness is often one of fluctuating capacity. Second, the gap in protective mechanisms where an EPA becomes a vehicle for financial exploitation. The current framework does not provide for routine independent oversight of EPA exercise unless a dispute is raised. For people with disability who signed EPAs in conditions that may not have reflected genuine informed consent, the protection comes too late. Third, the intersection of disability, fluctuating mental health, and medical research consent under s 110ZD of the GAA. Where a person fluctuates between capacity and incapacity, it is unclear who is the appropriate person responsible.

The protective outcome in CK was achieved only because hospital clinicians escalated the case, the Public Trustee was appointed on an emergency basis, and the matter came before the Tribunal. The decision is consistent with the framework but shows that the framework relies on others identifying and acting on risk. It does not build in routine safeguards.

8.4B Failure of the Best Interests Standard: AB and JC and the Deeper Question of Forced Sterilisation

The two 2026 vasectomy applications, *AB* [2026] WASAT 31 and *JC* [2026] WASAT 13, are introduced at section 8.5 below. Because these are recent and significant decisions on a matter of grave human rights importance, the discussion at section 8.5 is supplemented by a dedicated treatment of forced sterilisation at section 8.7A below. That section integrates the AB and JC outcomes with the international human rights framework, the absence of sexuality education referral pathways, the role of self-advocacy organisations including People First WA, and the work of the Sexuality Education Counselling and Consultancy Agency (SECCA). Readers may move directly to section 8.7A for the full analysis.

8.5 AB [2026] WASAT 31 and JC [2026] WASAT 13: Vasectomy, Bodily Integrity, and Informed Choice

Two 2026 SAT cases concerned applications for Tribunal consent to vasectomy for men with intellectual disability: *AB* [2026] WASAT 31 and *JC* [2026] WASAT 13.

JC is the more detailed of the two publicly reported cases. JC was a 23-year-old man with a rare genetic disorder involving intellectual disability, dyspraxia, and features of autism. He had never expressed a desire to engage in a sexual relationship and did not understand reproduction. He required 24-hour care and had a history of suspected sexual abuse. His parents, as joint limited guardians, applied for Tribunal consent to vasectomy under section 59(1) of the GAA.

The Tribunal refused consent. It found that JC lacked capacity to understand the procedure, but that there was no real risk, now or in the reasonably foreseeable future, that he would engage in sexual relations that might result in conception. A vasectomy would not reduce the risk of sexual assault; it would relieve parental anxiety about conception from assault. The Tribunal emphasised the least restrictive approach, the seriousness of sterilisation as an irreversible interference with bodily integrity, and the human rights principle that every person has the same basic human rights regardless of capacity.

This is a rights-respecting outcome. But the case also shows that in Western Australia, vasectomy of a person with intellectual disability without their consent remains legally possible through a Tribunal application. The CRPD Article 17 protection of the integrity of the person requires the most rigorous scrutiny of any non-consensual, irreversible procedure affecting reproductive capacity.

SWAN submits that Project 115 should recommend legislative guidance on the interface between guardianship decision-making and CRPD Articles 17 and 23, to ensure that the presumption is strongly against non-consensual sterilisation and that the only pathway for such a procedure is through genuinely compelling evidence of necessity, not parental anxiety.

8.6 JTH [2025] WASAT 68: Competing Wishes in Supported Accommodation

JTH [2025] WASAT 68 concerned a 21-year-old man with schizophrenia, mild intellectual impairment, ADHD, complex PTSD, ABI, and possible ASD. His mother NW had a history of interfering with medication and support services. JTH himself wanted to return home or to different supported independent living (SIL) accommodation. The SIL provider had banned NW from the property. The Public Advocate was the current guardian.

The Tribunal reappointed the Public Advocate as guardian and included a trial mechanism allowing JTH to receive his Centrelink pension after expenses. This

was a step toward supporting his financial autonomy within the substitute decision-making framework.

The case shows the persistent tension between an adult with complex disability expressing clear wishes about where he wants to live and who he wants to make decisions with him, and the clinical and legal assessment that his wishes are shaped by insufficient insight into his own needs. The CRPD General Comment No. 1 at paragraph 21 requires that where it is not practicable to determine the will and preferences of an individual, the "best interpretation of will and preferences" must replace "best interests" determinations. The Tribunal's decision, while well-reasoned on the specific facts, reflects a framework that has not yet moved from the "best interests" to the "will and preferences" paradigm.

8.7A Forced Sterilisation: The AB and JC Vasectomy Applications in Context

The sterilisation of people with disability without their free and informed consent is among the gravest forms of disability-based human rights violation. The record on this is clear. The CRPD Committee, the UN Special Rapporteur on Torture, the Senate Community Affairs Committee, and Women With Disabilities Australia (WWDA) have all called for the prohibition of non-therapeutic sterilisation of persons with disability without their own consent. Australia's record, however, remains one of authorisation under substitute decision-making frameworks rather than prohibition.

The 2026 WA decisions in *AB* [2026] WASAT 31 and *JC* [2026] WASAT 13 add new dimensions to this picture and warrant more analysis than the introduction at section 8.5.

Marion's Case and the Path to AB and JC

The legal framework for non-therapeutic sterilisation in Australia is built on *Secretary, Department of Health and Community Services v JWB and SMB (Marion's Case)* [1992] HCA 15; (1992) 175 CLR 218. The High Court held that

parents do not have authority to consent to the non-therapeutic sterilisation of a child with disability and that such decisions require court or tribunal authorisation. The decision protected against parental authority but not against authorisation by a substitute decision-maker. The protection is procedural rather than substantive: a court or tribunal can still authorise sterilisation if satisfied it is in the person's best interests.

Section 110ZD(7) of the GAA expressly excludes sterilisation from the medical treatment a "person responsible" can consent to. Section 59 of the GAA provides that the Tribunal may consent to sterilisation only where it is satisfied the procedure is in the best interests of the represented person. The Supreme Court of WA retains parens patriae jurisdiction over sterilisation of children. The structure follows Marion's Case in requiring independent decision-making but operates within a best interests framework that the CRPD Committee has identified as incompatible with Article 12.

The 2019 CRPD Concluding Observations and WWDA's Dehumanised

The CRPD Committee, in its 2019 Concluding Observations on Australia (CRPD/C/AUS/CO/2-3, 2019), recorded sustained concern about the persistence of forced sterilisation in Australia. At paragraph 33, the Committee identified specific concerns:

The Committee is seriously concerned about: (a) The ongoing practice of forced sterilisation, forced abortion and forced contraception among persons with disabilities, particularly women and girls, which remains legal; … (c) The fact that forced sterilization is not expressly prohibited.

At paragraph 34, the Committee recommended that Australia "expressly prohibit all forms of forced sterilisation of persons with disabilities in all circumstances, regardless of the consent of a substitute decision-maker."

The Senate Community Affairs Committee Inquiry into the Involuntary or Coerced Sterilisation of People with Disabilities in Australia (2013) reached similar conclusions, recommending legislative prohibition. WWDA's submission to that

Inquiry, *Dehumanised: The Forced Sterilisation of Women and Girls with Disabilities in Australia* (WWDA, 2013), provided extensive documentation of the pattern of authorisations across Australian jurisdictions. WWDA argued that "the Australian Government's current justification of the 'best interest approach' … has in effect been used to perpetuate discriminatory attitudes," and that the protective effect of judicial authorisation is overstated.

The DRC's Final Report Volume 6 at Recommendation 6.41 called for the legislative prohibition of non-therapeutic sterilisation. WA has adopted that recommendation in principle, subject to legislative review.

The pattern is one of consistent international and domestic recommendations for prohibition, met by a domestic legal framework that maintains best interests authorisation.

The Significance of AB and JC: Male Sterilisation Reaches Decision

Public, advocacy, and academic discussion of forced sterilisation in Australia has focused overwhelmingly on women and girls. This reflects the historical pattern of applications: women and girls have been disproportionately the subjects of sterilisation orders, principally for hysterectomy and tubal ligation, in the context of menstrual management and pregnancy prevention. The protections of Articles 17 (integrity of the person) and 23 (right to family, including retention of fertility on equal terms) of the CRPD are explicitly gender-neutral but have been understood almost exclusively in relation to female sterilisation.

AB [2026] WASAT 31 (President Glancy; Senior Member De Klerk; Senior Sessional Member Winterton, dissenting; 10 April 2026) and *JC* [2026] WASAT 13 (President Glancy; Dr E Marillier, Senior Member; Mr R Povey, Member; 24 February 2026) bring two male sterilisation applications into the public record in WA in a single year. Both involve young men with intellectual disability whose parents applied under s 59(1) of the GAA for Tribunal consent to vasectomy. Both applications were refused. The cases together open a new chapter in the

Australian discussion of non-consensual sterilisation, requiring CRPD-based analysis to be applied to male as well as female applications.

Application Patterns and the Best Interests Frame

Reading AB and JC together, several patterns emerge.

Parental anxiety as principal motivation. In both cases, the application was driven principally by parental concerns about the possibility of future paternity following sexual contact, including in the context of suspected sexual abuse. JC's hearing noted a history of suspected sexual abuse; the application reflected parental anxiety about pregnancy resulting from any future abuse. AB's parents expressed concern about the consequences if AB initiated sexual activity in the future. In neither case was there evidence that the represented person desired sterilisation, understood the procedure, or had been informed about reversible contraceptive alternatives in accessible form.

The risk assessment in both cases. Both Tribunals found the risk of paternity to be low. In AB, the majority found the risk to be "currently highly unlikely." In JC, the Tribunal found no real risk now or in the reasonably foreseeable future. The dissenting Senior Sessional Member in AB took a different view, based on AB's physical capability for sexual relations and the potential distress AB would experience if he were to father a child. The majority view in AB and the unanimous Tribunal in JC produced refusals: the risk was insufficient to justify the irreversibility of the procedure.

Best interests rather than will and preferences. Neither Tribunal could or did apply the will and preferences standard. The GAA's s 59 framework requires the Tribunal to determine best interests. The represented person was not able, on either Tribunal's finding, to understand the procedure or its implications. There was therefore no will or preference to find out in the CRPD sense. This produces a fundamental gap. The CRPD's response to that gap is not best interests substitution; it is the support obligation. The CRPD requires that the State support the person to develop, exercise, and express their will and preferences,

including about their sexuality and reproductive life. The GAA does not require this as a precondition of a sterilisation application.

The absence of SECCA referral. Neither AB nor JC records any referral to, or consultation with, the Sexuality Education Counselling and Consultancy Agency (SECCA, https://secca.org.au/). SECCA is a Perth-based not-for-profit organisation that has been delivering specialist sexuality and relationship education for people with disability in WA for over forty years. SECCA's services include one-on-one psychosexual counselling, professional development training for support workers and clinicians, family counselling, and educational materials developed for people with intellectual disability and autism. SECCA's work directly addresses the context in which AB and JC arise: people with disability whose sexuality is not understood, whose access to information about sexual relations is limited, and whose families are anxious about reproductive risk. The absence of any reference to SECCA in the published decisions of AB and JC is a significant procedural gap. A genuinely supported decision-making approach to sexuality and reproductive choice would require that, before the Tribunal is asked to consent to an irreversible procedure, the represented person has been offered accessible sexuality and relationship education through SECCA or an equivalent provider, over a sustained period.

People First WA's perspective. People First WA is a disability rights organisation. Its position on sexuality, expressed by its members in public submissions and through SWAN's collaborative work, is that people with intellectual disability have the right to relationships and to sexual lives, on an equal basis with others, and that support is required to make this possible. Framing sterilisation applications as decisions to be made by clinicians, parents, and the Tribunal, without the structured involvement of self-advocacy and peer support organisations, excludes the voice of the broader self-advocacy community from a domain of life that is fundamental to dignity. SWAN endorses the People First WA position and submits that the GAA should be amended to require, before any application for sterilisation consent, that the Tribunal be satisfied the represented person has

had access to peer self-advocacy support and supported decision-making about relationships and sexuality.

The narrow consideration of alternatives. In both AB and JC, the only alternative to vasectomy explicitly considered was condom use. In AB, the Tribunal noted that AB could not reliably use condoms. In JC, the Tribunal noted that JC's dyspraxia and motor difficulties prevented him from using condoms. The CRPD-aligned response to the limitation of one method is not sterilisation; it is consideration of all alternatives, including support-intensive relationship arrangements, structured sexuality education, and reversible contraceptive options for women partners where applicable, set within a supported decision-making framework. The narrow framing of alternatives in AB and JC reflects the substitute decision-making structure rather than a comprehensive engagement with the reproductive choice options available.

Implications and Reform

The rights-respecting outcomes in AB and JC (refusal of consent) should not obscure the structural problem the cases reveal. The GAA continues to allow applications for non-consensual sterilisation of people with disability, applying a best interests test that the CRPD Committee has repeatedly identified as incompatible with Article 12. Protection in any individual case depends on the Tribunal's willingness to refuse the application. It does not depend on a legislative prohibition. WA's position on DRC Recommendation 6.41 (legislative prohibition) is in-principle acceptance subject to legislative review. Project 115 should recommend that review proceed urgently.

In the interim, the GAA should be amended to require, as a precondition of any application under s 59 for consent to a procedure that affects reproductive capacity:

(a) Evidence that the represented person has been offered, through SECCA or an equivalent specialist provider, structured sexuality and relationship education delivered in accessible form over a sustained period;

(b) Evidence that supported decision-making about relationships and sexuality has been provided with the involvement of an organisation such as People First WA;

(c) Evidence that all reversible alternatives have been considered and found, on a CRPD-compliant analysis, to be inappropriate or impracticable;

(d) An express statement of the CRPD-aligned standard, requiring the Tribunal to be satisfied not only that the procedure is in the person's best interests, but that it does not violate Articles 12, 17, or 23 in the particular circumstances.

These precondition requirements are consistent with the protective intent of s 110ZD(7) and the existing s 59 framework. They turn the requirement of independent decision-making from a procedural protection into a substantive safeguard built around the supported decision-making approach the CRPD requires. They also place the practical responsibility for engaging with SECCA and self-advocacy organisations on the applicants and the State, rather than leaving it to chance.

The submission's recommendations at Section 16 include a specific recommendation (E6) addressing this issue. Ideally, forced sterilisation of any form should be outlawed in all jurisdictions of Australia.

8.7B Restrictive Practices, MS [2020] WASAT 146, and the OICS Link

The systematic use of restrictive practices in NDIS-funded disability accommodation is a critical access to justice issue that intersects directly with the guardianship system. The leading WA authority on the interface between the GAA, the NDIS Act, and the regulated restrictive practices framework is *MS* [2020] WASAT 146 (President Pritchard; Dr E Marillier, Member; Mr J Mansveld, Member; 25 November 2020). MS is a foundational decision for understanding the legal architecture of restrictive practices in WA and is discussed in detail here because its analysis underpins the recommendations at Section 16.

The Five Categories of Regulated Restrictive Practices

The Full Tribunal in MS adopted the taxonomy from r 6 of the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018* (Cth) (RP Rules). The five categories of regulated restrictive practices are:

(a) Seclusion: the sole confinement of a person with disability in a room or a physical space at any hour of the day or night where voluntary exit is prevented.

(b) Chemical restraint: the use of medication or a chemical substance for the primary purpose of influencing a person's behaviour, other than medication prescribed for a diagnosed mental disorder, physical illness, or physical condition.

(c) Mechanical restraint: the use of a device to prevent, restrict, or subdue a person's movement for the primary purpose of influencing a person's behaviour.

(d) Physical restraint: the use or action of physical force to prevent, restrict, or subdue movement of a person's body.

(e) Environmental restraint: restriction of a person's free access to all parts of their environment, including items or activities.

At [20]–[23] of MS, the Full Tribunal adopted these categories and confirmed their application to NDIS-funded settings in WA from the commencement of full NDIS participation.

Legal Consequences and the Marion's Case Principle

At [61] of MS, the Full Tribunal identified the legal consequences of restrictive practices used without consent. A restrictive practice involving physical force may amount to an assault under the criminal law or a trespass to the person, giving rise to civil law remedies. Securing residents in a residential facility by locking their bedroom doors, without the consent of, or on behalf of, the residents, may give rise to civil actions for false imprisonment.

The Tribunal cited *Marion's Case* at 233 for the foundational principle: "consent ordinarily has the effect of transforming what would otherwise be unlawful into accepted, and therefore acceptable, contact." The corollary is equally important. Without consent, what occurs in disability service settings may be assault, false imprisonment, or another criminal or civil wrong rather than care. The restrictive practices framework is therefore not merely a regulatory regime: it is the mechanism by which conduct that would otherwise be unlawful is made lawful in disability accommodation.

The Guardianship Trigger and the Circular Logic

The RP Rules require that a behaviour support plan (BSP) authorising regulated restrictive practices be developed in line with the State or Territory authorisation process for the use of restrictive practices. In WA, that authorisation process requires a guardian's consent. The result is that, for NDIS participants who cannot consent to restrictive practices and who need regulated restrictive practices as part of their BSP, a guardianship order with a specific power to consent to restrictive practices is required.

This structure has produced what the Tribunal in MS at [7] described as "a marked increase in applications for guardianship orders." The NDIS has effectively made guardianship orders the gateway to lawful restrictive practices for participants who cannot consent themselves.

The circular logic that follows is structural and consequential:

(i) The person's challenging behaviour creates the need for restrictive practices;

(ii) The restrictive practices require guardian consent under the RP Rules and WA authorisation process;

(iii) The need for guardian consent requires guardianship orders under the GAA;

(iv) The guardianship orders require a finding of incapacity under s 43;

(v) Throughout this process, there is no mechanism for building the person's capacity to take part in decisions about their own behaviour management, no

requirement that supported decision-making about behaviour be tried, and no graduated alternative between informal arrangements and full guardianship.

MS at [45]–[58] describes the specific BSP for the represented person in that case. Several of the restrictive practices in place were environmental features of shared accommodation not specifically designed for MS. He was locked in his bedroom at night partly to protect other residents from his behaviour, rather than because of his own behavioural needs. This suggests that people with disability in shared accommodation may bear the cost of inadequately designed and resourced settings, in the form of restrictive practices applied to manage the behavioural interaction of multiple residents.

Mandatory BSP Requirements and the Reduce-and-Eliminate Standard

At [31]–[36] of MS, the Tribunal sets out the mandatory requirements for a BSP under the RP Rules. The BSP must be developed by a specialist behaviour support provider following a functional behavioural assessment. The provider must take all reasonable steps "to reduce and eliminate the need for the use of regulated restrictive practices" and must consult with the person, family, and carers. The Policy on the conditions for restrictive practices in a BSP, quoted at [36], provides that restrictive practices must be "used only as a last resort in response to a risk of harm … after the Implementing Provider has explored and applied other evidence-based, person-centred and proactive strategies"; they must be "the least restrictive response possible"; and they must be "used for the shortest possible time."

The reduce-and-eliminate standard, properly applied, is a significant protective principle. In practice, however, BSP implementation across WA disability accommodation is highly variable. The resources needed to genuinely reduce reliance on restrictive practices, including skilled behaviour support practitioners, environmental design changes, and consistent staffing, are not uniformly available. The result is that BSPs frequently authorise restrictive practices in circumstances where less restrictive alternatives have not genuinely been tried.

T [2024] WASAT 77 and the Limits of the Current Oversight Framework

T [2024] WASAT 77 (Ms R Bunney, Member; 26 July 2024) shows the limits of the current oversight framework. T is a 23-year-old man with severe autism and intellectual disability, essentially non-verbal, showing challenging behaviours including aggression, property damage, faecal smearing, and self-harm. His parents had been joint plenary guardians. In late February 2024, police were called to T's residence by a locum doctor. They found T, in the words of the attending officer's email quoted at [7], "naked and locked behind a reinforced steel barred door with a mattress covered in faeces."

T was taken to hospital, treated for dental pain, a rectal prolapse, and an inguinal hernia, and discharged into his mother's care. The Department of Communities applied for review of T's guardianship. The Tribunal reappointed T's parents as joint guardians, accepting the evidence that the confinement was for T's and others' safety. The reasons do not explicitly address whether the conditions in which T was found constituted regulated restrictive practices for which guardian consent had been lawfully obtained under a BSP. The case raises the question of when the difficulty of managing a profoundly disabled person's support needs, in the context of severely inadequate resources, crosses into conditions amounting to abuse or neglect.

The OICS has documented similar conditions in custodial settings; T shows that non-custodial settings can produce equivalent conditions, with less oversight. Critically, T was found only because a locum doctor was concerned enough to call the police. There is no routine, independent inspection regime for NDIS-funded residential disability accommodation equivalent to the OICS regime for custodial settings.

CRPD Article 15 and the OPCAT Framework

CRPD Article 15 prohibits torture and cruel, inhuman, or degrading treatment or punishment. The UN Special Rapporteur on Torture has identified the use of seclusion, chemical restraint, and mechanical restraint in disability settings as

potentially amounting to cruel, inhuman, or degrading treatment. The conditions in which T was found would, in any custodial setting, trigger an immediate OICS response.

Australia ratified the Optional Protocol to the Convention Against Torture (OPCAT) in December 2017, with an obligation to establish independent national preventive mechanisms to monitor all places where people are deprived of liberty. The DRC's Final Report Volume 11 at Recommendation 11.12 called on all states and territories to urgently put in place community visitor schemes for disability accommodation, with national consistency of scope, powers, standards, and data collection. WA's position on Recommendation 11.12 is "subject to further consideration."

The submission's recommendations at Section 14 (D2) address the absence of a community visitor scheme for places of detention. The recommendations at Section 16 below (D7) propose extending the OICS mandate (or equivalent independent oversight) to NDIS-funded residential disability accommodation. This would ensure that the disability-specific safeguarding function the OICS provides in custodial settings is also delivered in non-custodial settings where people with disability are accommodated in conditions involving deprivation of liberty within the meaning of OPCAT.

8.7 The Case for Supported Decision-Making Reforms

DRC Recommendation 6.6 sets out ten principles of supported decision-making that states and territories should embed in guardianship and administration legislation. Western Australia has accepted this recommendation in principle. The LRCWA Project 114 Final Report has recommended the shift to supported decision-making. The Commonwealth's interpretative declaration on CRPD Article 12 remains in place, but the direction of reform is clear.

For Project 115, the specific intersection between guardianship and the justice system requires direct attention. A person who is simultaneously subject to a guardianship order, a CLMIA supervision order, and an NDIS plan is navigating three separate legal and administrative frameworks with potentially conflicting authority structures. There is no mechanism that provides a unified, coherent, supported decision-making approach across all three systems. This must be addressed.

SWAN recommends that Project 115 explicitly address how supported decision-making operates at the criminal-civil interface, and develop specific guidance for forensic patients with guardianship orders.

Section 9: Family Law, Child Protection, and Autistic Mothers

9.1 Introduction

Autistic parents, and autistic mothers in particular, face a higher risk of child protection involvement, parenting capacity assessments, and child removal. Research consistently shows that this elevated risk is not mainly caused by parenting deficits. It is caused by systemic misalignment: professional ignorance of autism, discriminatory assumptions built into assessment frameworks, and the structural inaccessibility of family law and child protection proceedings for people with neurodevelopmental disability.

9.2 The Research Evidence: Hampton, Pohl, and the Double Empathy Problem

Hampton, Allison, and Baron-Cohen (2022a; 2022b; 2022c) conducted a three-paper series on autistic mothers' experiences. Key findings include:

- Autistic mothers showed significantly higher levels of stress, depression, and anxiety during pregnancy and postnatally than non-autistic mothers.
- There were no significant differences in parenting confidence, nurturance, involvement, or routine: autistic and non-autistic mothers reported equivalent engagement in positive parenting behaviours.
- At two to three months and six months postnatally, observational studies showed no group differences in parenting behaviours, including sensitive responsiveness, scaffolding, and affect during play.
- Autistic mothers were reluctant to disclose their diagnosis to healthcare professionals, and professionals lacked autism knowledge.

Hampton et al. (2022a) provide empirical evidence that autistic mothers' elevated child protection contact is not explained by parenting deficits. It is explained by systemic misalignment and professional misidentification.

Pohl, Crockford, Blakemore, Allison, and Baron-Cohen (2020), in a survey of 355 autistic and 132 non-autistic mothers, found that autistic mothers were able to act in the best interests of their child and put their child's needs first, but were more likely to have high rates of involvement with child protective services even when they had asked for parenting support.

The "double empathy problem" (Milton, 2012) provides the theoretical framework for understanding these findings. It proposes that communication breakdowns between autistic and non-autistic people arise from mutual differences in empathy and understanding, not from autistic deficits alone. In child protection assessment contexts, non-autistic assessors frequently misread autistic parenting behaviours such as atypical eye contact, flat affect, literal communication, and unusual emotional expression as signs of inadequate bonding or neglect, while autistic parents misread assessors' indirect communication as hostile or threatening. This mutual misalignment creates systemic assessment errors (Milton, 2012).

9.3 McConnell Research: Parents with Intellectual Disability

Professor David McConnell's research on parents with intellectual disability provides the most extensive evidence base on this issue. McConnell and Llewellyn (2002) found that parents with intellectual disability are "much more likely than other parents to experience intervention by child welfare agencies on the grounds of suspected abuse and neglect." McConnell, Feldman, Aunos, and Prasad (2011) found that Canadian parents with intellectual disability were up to four times more likely to have children removed, even after controlling for mental health, socioeconomic factors, and child characteristics.

McConnell's core finding is that separating children from parents with intellectual disability reflects systemic discrimination rather than any heightened actual risk to children. Children of parents with intellectual disability remain far more likely to be placed out of home even when all confounding risk factors are controlled for (McConnell, 2022).

Llewellyn, McConnell, and Ferronato (2003) examined an Australian court sample and found high rates of adverse outcomes for parents with disability. In Western Australia, there is no systematic data on the proportion of child protection proceedings that involve parents with disability, or on the outcomes of those proceedings.

9.4 HR v CEO of the Department of Communities [2022] WASC 77

HR v CEO of the Department of Communities [2022] WASC 77 was decided by Archer J on 5 April 2022. HR was the mother of MRMS, who had been in foster care since 11 months old. HR had "significant cognitive deficits" and "quite marked cognitive impairment, particularly in regard to verbal understanding." MRMS was diagnosed with ASD on 7 November 2018.

HR appealed against an unlimited protection order. She did not attend the final trial day, providing a medical certificate that the Court found insufficient to show she was unfit to attend. The magistrate made the protection order with virtually no stated reasons.

Archer J found the magistrate's reasons were inadequate but held there was no substantial miscarriage of justice because the protection order was the only decision reasonably open on the evidence, based on the unchallenged expert evidence of Dr Phil Watts. The procedural fairness ground was rejected because the medical certificate did not establish HR was unfit to attend.

From an access to justice perspective, this outcome is deeply concerning. A mother with significant cognitive deficits was denied a hearing on her child's

welfare because of a medical certificate technicality. There is no indication in the judgment that any procedural accommodation was made throughout the proceedings: no communication support, no intermediary, no explanation of process in accessible language.

The Children and Community Services Act 2004 (WA) is the primary legislative framework for child protection in WA. It has no express provisions for procedural accommodation for parties with disability. This gap directly violates CRPD Articles 12 and 13.

The finding that HR's cognitive limitations constituted "lack of capacity" rather than "lack of training or education" effectively closes off any prospect of reunification without addressing the structural inaccessibility of the proceedings. A parent with cognitive disability who has never received procedural support, communication assistance, or disability-adjusted parenting capacity assessment is being assessed against a standard that assumes neurotypical participation. The adverse findings on parenting capacity reflect not the reality of her parenting but the inaccessibility of the process.

9.5 Breckenridge and Kudrna [2019] FCWA 9: ASD in Children, Risperidone, and Parental Disability

Breckenridge and Kudrna [2019] FCWA 9 was decided by Sutherland J of the Family Court of Western Australia on 10 January 2019. A protracted parenting dispute involved two sons who had possible ASD and were prescribed Risperidone. The mother had possible but undiagnosed mental health or psychiatric conditions. After a 14-day trial, orders were made for the children to live with the father. The mother became highly distressed when the ICL's proposed orders were read.

The Court found the mother posed a risk of ongoing psychological harm to the children through her mental health issues and pattern of subjecting the children to repeated medical and psychological assessments. The case shows how a

mother's mental health and disability status can become the dominant frame in parenting litigation, potentially pushing aside any systemic analysis of whether appropriate supports were provided to her.

The Family Court framework, both the Family Court of WA and the federal family courts, has no dedicated provisions for identifying and accommodating parents with disability in proceedings. Pre-trial disability identification, communication support, and adapted procedural guidance are available only informally and inconsistently.

9.6 Aboriginal Over-Representation: Family Matters 2025

SNAICC's Family Matters 2025 report found that Aboriginal and Torres Strait Islander children were 9.6 times more likely to be in out-of-home care than non-Indigenous children, and that Aboriginal and Torres Strait Islander infants were 8.9 times more likely to be placed in out-of-home care (SNAICC, 2025).

The intersection of Aboriginality and disability in child protection is critical. Many Aboriginal children who enter or remain in out-of-home care have undiagnosed disability, including FASD, intellectual disability, and ASD. Many Aboriginal parents involved in child protection proceedings have cognitive disability that is unrecognised and unaccommodated. The double disadvantage of Aboriginality and disability in child protection proceedings produces outcomes that represent some of the most serious access to justice failures in WA.

DRC Recommendation 9.1 required the co-design of culturally appropriate parenting capacity assessment principles and guidelines for First Nations parents with disability. This recommendation has not been put in place in WA.

9.7 The NDIS Intersection

When NDIS supports for a parent with disability are reduced, cut, or not approved, the consequences go beyond that parent. Reduced NDIS supports translate directly into reduced capacity to manage household tasks, organise routines, maintain stability, and meet the structured expectations of child protection case plans. For autistic parents, a reduction in NDIS-funded supports, including support coordination, behaviour support, personal care, and community participation, can directly trigger child protection notifications and intervention.

The 2026 NDIS Bill's proposed changes to SIL ratios, support funding, and plan renewal would have direct impacts on parents with disability and their children. The Commission should note this connection and recommend that Commonwealth and state child protection frameworks expressly account for the impact of NDIS changes on families with disability.

9.8 Recommendations Arising from Section 9

SWAN recommends:

Recommendation F1: Put into legislation, under the Children and Community Services Act 2004 (WA), procedural accommodations in child protection proceedings for parents with disability. These should include mandatory communication support, plain language documents, and extended timelines.

Recommendation F2: Require disability-informed and autism-adapted parenting capacity assessment frameworks, developed in co-design with autistic and disabled parents.

Recommendation F3: Co-design with First Nations families culturally appropriate parenting capacity assessment principles and guidelines, putting DRC Recommendation 9.1 into effect.

Recommendation F4: Require that any reduction or removal of NDIS-funded supports for a parent with disability be assessed for its impact on family stability

and child protection risk before the decision takes effect, in line with WA's obligations under the Children and Community Services Act 2004 (WA) and CRPD Article 23.

Section 10: Youth Justice and Banksia Hill

10.1 The Banksia Hill Crisis

Banksia Hill Detention Centre (BHDC) is Western Australia's primary youth detention facility, holding young people aged 10 to 18 years who are on remand or serving custodial sentences. Since at least 2021, Banksia Hill has been in a state of sustained crisis. The DRC, OICS, the Commissioner for Children and Young People, and successive courts have found that its treatment of a population that is overwhelmingly a neurodisability population amounts to unlawful treatment.

The Bower et al. (2018) Telethon Kids study, discussed in Section 3, found 89% of the Banksia Hill population had severe neurodevelopmental impairment and 36% had FASD. The OICS (2023) found that children were being locked in cells for 20 to 24 hours per day continuously from at least late 2021 through 2023. This is solitary confinement of a disabled child population. The DRC's Counsel Assisting submissions for Public Hearing 27 relied on these findings to establish that confinement practices at Banksia Hill amounted to cruel and inhumane treatment.

10.2 VYZ v State of Western Australia [2022] WASC 274: Unlawful Confinement

In *VYZ by his next friend XYZ v Chief Executive Officer of the Department of Justice* [2022] WASC 274, Justice Paul Tottle found that the confinement of VYZ in his sleeping quarters for more than 20 hours per day on 26 days between January and June 2022 was unlawful. VYZ was on remand. In a second ruling in 2023, Justice Tottle found that the lockdown treatment of three further juveniles was unlawful and granted injunctions sought by the Aboriginal Legal Service of WA preventing similar treatment. The State was found to have "repeatedly broke[n] the law."

10.3 Class Actions and the Death of a Detainee

The Levitt Robinson law firm has filed two class actions. The Banksia Hill class action, in the Federal Court, represents around 600 current and former detainees from 1997 to June 2022, alleging unlawful treatment, disability discrimination, and human rights infractions. Lead applicants include a young person with ASD and another with schizophrenia (SBS NITV, 2022). A separate Unit 18 class action covers juvenile detainees held in the adult Casuarina Prison's Unit 18 (The West Australian, 2023).

In late August 2024, a boy involved in the Levitt Robinson class action died by suicide at Banksia Hill. He had a diagnosed disability, had been subjected to protracted lockdown and solitary confinement, and had a history of serious self-harm (ABC News, 2024). He was not the first young person with disability to die at Banksia Hill.

In October 2024, a magistrate described an 11-year-old who had spent 77 days at Banksia Hill as "the State's most vulnerable child." ADHD and FASD assessments had been flagged but not yet completed (ABC News, 2024).

10.4 DRC Recommendations on Youth Justice and WA

The DRC made specific recommendations about Western Australian youth detention:

Recommendation 8.3 required states and territories to introduce legislation or other measures to prohibit the use of solitary confinement of children with disability in youth detention in all circumstances. WA has accepted this in principle.

Recommendation 8.4 required timely screening and expert assessment for children with cognitive disability involved in the criminal justice system. WA has accepted in principle.

Recommendation 8.5 required appropriate initial and ongoing training and support for staff and officials in youth detention, including on trauma-informed care and culturally appropriate approaches. WA has accepted.

Recommendation 8.6 is directed specifically at the Western Australian Department of Justice. It requires development and delivery of a recruitment and retention strategy for youth detention staff, including greater representation of staff with disability and First Nations background. WA has accepted in principle.

Recommendation 8.7 requires the WA Department of Justice to immediately stop confinement practices amounting to solitary confinement of children with disability; put in place a new operating philosophy that is therapeutic, non-punitive, non-adversarial, trauma-informed, and culturally competent; and ensure lawyers representing detained clients have adequate time and confidentiality to take instructions. WA has accepted in principle. The Model of Care commenced in April 2023. The OICS Part 2 follow-up (December 2024) found considerable progress but noted "some slippage."

Recommendation 8.22 required states and territories to raise the minimum age of criminal responsibility to 14. WA's position is "subject to further consideration." Western Australia currently maintains an age of criminal responsibility of 10.

10.4A The 2024 OICS Youth Custody Review, the Banksia Hill Security Review, and the Withdrawal Problem

In the second half of 2024 the Office of the Inspector of Custodial Services (OICS) produced two pieces of work directly relevant to young people with disability in WA youth custody. The first is the *Inspector's Review of Youth Custodial Services*, which the Department of Justice's response (OICS, 2024c) addresses in detail, including its position on a series of disability-related recommendations the Department indicated it would either not progress or would

treat as a lower priority. The second is the *Banksia Hill Inquiry Security Review Paper* (OICS, 2024d), which makes detailed findings about the use of security regimes, lockdowns, and movement restrictions, and their disproportionate effect on young people with cognitive, neurodevelopmental, and mental health disability.

Taken together, the two pieces of work paint a picture that is consistent with the coronial findings, the *VYZ* litigation, the class actions, and Section 10.1 to 10.3 of this submission. Young people with disability at Banksia Hill are routinely subjected to behavioural and security regimes that are anti-therapeutic, that worsen the underlying disability-related distress, and that increase the risk of self-harm and suicide. The Department of Justice's published response to the youth review (OICS, 2024c) accepts some recommendations, partially accepts others, and declines or defers a significant number, including ones that bear directly on disability identification, communication support, and behaviour management.

What distinguishes the 2024 OICS work from earlier reviews is that significant parts of it have not yet produced the legislative or operational changes the Inspector recommended. The disability-specific elements in particular have not been comprehensively implemented. SWAN's position, consistent with DRC Recommendation 8.7, is that the disability-specific recommendations of the 2024 OICS youth review and the 2024 security review should be implemented in full, that the withdrawn or deferred recommendations should be re-tabled for parliamentary consideration, and that the Department of Justice should be required to publish a costed implementation plan within six months. Recommendation G6 gives effect to that position.

This is also where the connection between the youth custody system, the Disability Access and Inclusion Plan under the *Disability Services Act 1993* (WA), and the Targeted Action Plans matters in practice. The Department of Justice's DAIP applies to youth custody as much as to adult custody. The Safety, Rights and Justice Targeted Action Plan 2025-2027 commitments on screening,

training, communication support, and prevention of violence apply to children with disability in custody as much as to adults. A Project 115 reform that does not require the Department to operationalise these existing instruments at Banksia Hill, including the autism-specific elements, will leave the worst of the problem untouched.

10.5 The Age of Criminal Responsibility

Western Australia's age of criminal responsibility of 10 years means that 10-year-old children, many of whom have neurodevelopmental impairments that are unrecognised and undiagnosed, can be prosecuted for criminal offences. The ACT raised its age to 14 as of 1 July 2025. Victoria has raised it to 12, with a commitment to 14 (with exceptions) by 2027. Queensland does not support raising the age. The Northern Territory has controversially lowered the age back to 10.

The case for raising the age is compelling in the neurodisability context. A 10 or 11-year-old child with FASD, ASD, or intellectual disability has very limited understanding of the nature and consequences of their actions, very limited capacity to engage with the legal process, and very limited capacity to benefit from a punitive justice response. The 85% recidivism rate for children leaving WA detention (Justice Reform Initiative, 2024) shows empirically that the current approach is not working.

SWAN recommends that the Commission explicitly support raising the age of criminal responsibility to at least 14, consistent with DRC Recommendation 8.22 and the growing national consensus.

10.6 The Coveney Case as Systemic Illustration

Coveney v State of Western Australia [2026] WASCA 20 shows what happens when a young man with ASD and severe ADHD, whose childhood was marked by unaddressed neurodevelopmental needs, reaches adulthood without having

received adequate therapeutic support. Coveney was 18 years and three months old at the time of the offending. His ASD and ADHD had been diagnosed. There was no evidence that he had received sustained, adapted, therapeutic intervention for his conditions. The expert psychologist rated his risk of further violent offending as high but amenable to treatment.

Coveney is now firmly embedded within the justice system. He is also a young person with two significant neurodevelopmental conditions who has been processed through a justice system that has no therapeutic pathway for him. The Court of Appeal reduced his sentence, appropriately. But a reduced prison sentence does not address the underlying need. The NDIS, if it remains accessible and adequately funded, may provide therapeutic supports after release. If the 2026 Bill reduces Coveney's NDIS plan, no such pathway will exist. Future care, support and supervision will fall to the State.

10.7 Recommendations Arising from Section 10

Recommendation G1: Raise the age of criminal responsibility in Western Australia to at least 14 years, consistent with DRC Recommendation 8.22.

Recommendation G2: Put into legislation mandatory disability screening at every entry point to the youth justice system, using a validated, non-self-report screening tool.

Recommendation G3: Put in place a therapeutic, non-punitive, trauma-informed operating philosophy at Banksia Hill and all youth custodial facilities, as recommended by DRC Recommendation 8.7.

Recommendation G4: Develop and fund dedicated therapeutic diversion pathways for young people with ASD, FASD, intellectual disability, and other neurodevelopmental conditions.

Recommendation G5: Ban the use of solitary confinement, including extended cell lockdowns, for any child with disability in youth detention in Western Australia, with no exceptions, in line with DRC Recommendation 8.3.

Section 11: Aboriginal Autistic People: Compounded Marginalisation

11.1 The Diagnosis Gap in Remote WA

Among Aboriginal people in remote and very remote Western Australia, the gap between autism prevalence and autism diagnosis is vast. Research suggests that autism prevalence rates in Aboriginal communities are likely comparable to those in non-Aboriginal communities, yet Aboriginal people with autism are far less likely to receive a formal diagnosis (Randall et al., 2024; Mangan & Arunachalam, 2022).

The reasons for this gap are structural. Autism diagnostic services do not exist in most remote WA communities. The cost of obtaining a diagnosis through private pathways is prohibitive. The diagnostic criteria for autism were developed primarily from research with white, male, non-Aboriginal samples and may not translate accurately to Aboriginal people whose communication styles, social structures, and expressions of cognitive difference are culturally distinct. Families in remote communities may distrust government agencies, including the NDIA, because of historical and ongoing child removal, surveillance, and intervention (First Peoples Disability Network Australia (FPDN), 2024).

Without diagnosis, there is no NDIS plan. Without an NDIS plan, there is no formal support. Without formal support, the pathway from unrecognised autism through AOD use, family stress, and community conflict to police contact is well documented. The NDIA's Justice Transition Project (FOI-25-26-1495) explicitly identified the need for a nationally consistent, culturally validated disability screening tool and for an increase in the NDIA First Nations workforce.

11.2 Dr Scott Avery: Culture is Inclusion

Dr Scott Avery's foundational research, *Culture is Inclusion: A Narrative of Aboriginal and Torres Strait Islander People with Disability* (Avery, 2018), documented the "unique intersectional discrimination and social inequality" faced by Aboriginal people with disability, describing it as "an interaction of discrimination that is both Aboriginal and Torres Strait Islander and disability related." Avery found that "the pages on disability have been excluded from the book of Australian Indigenous policies, such as Closing the Gap. And whole chapters on disability have been ripped from every single inquiry into why so many Aboriginal and Torres Strait Islander people end up in prison" (Avery, 2018).

Something Stronger: Truth-Telling on Hurt and Loss, Strength and Healing, from First Nations People with Disability (Avery, 2020) continued this documentation, centring the voices of First Nations people with disability. Avery's work is both a scholarly contribution and an advocacy tool, showing that the intersection of Aboriginality and disability requires specific policy attention.

11.3 Patrick McGee and the Winmartie Case

Patrick McGee's advocacy around the Winmartie case brings the abstract critique of indefinite detention into stark human focus. Winmartie (a Warlpiri/Arrernte man) was found unfit to plead and detained in the Forensic Disability Unit in Alice Springs for over 16 years. He was detained not because of the gravity of his offending but because there were no community supports available to allow his release, and because the unfit-to-plead framework had no upper limit on the duration of that detention (McGee, 2024; ABC News, 2023).

The Winmartie case is not unique in its structure. Similar situations arise in Western Australia, where Aboriginal people with cognitive impairment found unfit to plead under the CLMIA are held in custody not because of ongoing risk but because of the absence of culturally appropriate, adequately supported

community options. The CLMIA's limiting terms have improved this situation but do not eliminate it, particularly where community supervision orders cannot be put in place because suitable accommodation and support services do not exist in remote communities.

McGee states: "Indefinite detention laws which see people with intellectual disabilities, and disproportionately impact Aboriginal and Torres Strait Islander peoples, without an end date to their detention, must be repealed immediately. Often people with intellectual disabilities who are incarcerated or detained in forensic disability units are held there due to an absence of appropriate housing or disability services and funding that would facilitate their release" (ALHR, 2023).

11.4 Deaths in Custody: The Disability Dimension

The AIC's 2024-25 custody deaths report records 113 deaths in custody, with 33 Aboriginal deaths (AIC, 2025). This continues a pattern of Aboriginal over-representation in custody deaths that has persisted since the Royal Commission into Aboriginal Deaths in Custody (1991). The disability dimension of these deaths is under-documented, because disability is not systematically recorded at the point of custody entry. Given the OICS finding that 60% of adults with known intellectual disability or cognitive impairment in WA custody identify as Aboriginal, the intersection of Aboriginality, disability, and deaths in custody is substantial.

SWAN submits that the absence of disability data in deaths in custody reporting is itself a structural failure. DRC Recommendation 8.13, requiring nationally consistent data on people detained in forensic systems by disability type, age, gender, and First Nations identity, has been accepted in principle by all jurisdictions but not yet put in place.

11.5 FPDN and First Nations Disability Justice

The First Peoples Disability Network Australia (FPDN) has documented that disability is twice as prevalent in Aboriginal and Torres Strait Islander communities as in the general population, that co-occurring disability is more complex, and that life expectancy compression means that disability in Aboriginal communities frequently presents at younger ages (FPDN, 2024). FPDN's submissions to the DRC and Closing the Gap review consistently emphasise that disability policy and Aboriginal policy must be integrated, not siloed.

The National Justice Project's 2025 position statement found that First Nations people with "severe and profound disability" are 50% more likely to be removed as children, or to have a close family member removed, and that many First Nations children enter out-of-home care with undiagnosed disability, with lack of access to timely and culturally appropriate disability assessments systemic across every jurisdiction.

11.6 Recommendations Arising from Section 11

Recommendation H1: Develop and put in place a nationally consistent, culturally validated disability screening tool for Aboriginal and Torres Strait Islander communities, co-designed with FPDN and Aboriginal autistic people, in line with NDIA Justice Transition Project Recommendation 1.

Recommendation H2: Increase the NDIA First Nations workforce, including employment of Aboriginal disability workers in remote WA communities, in line with NDIA Justice Transition Project Recommendation 2.

Recommendation H3: Ensure that CLMIA community supervision orders cannot be put in place where appropriate culturally safe accommodation and support services are not available, and that the absence of such services does not result in continued custody.

Recommendation H4: Put in place DRC Recommendation 8.16 (increased resources for First Nations organisations providing culturally safe support services to First Nations people with disability in custody).

Recommendation H5: Require disability data collection, disaggregated by Aboriginal and Torres Strait Islander identity, at every stage of the WA criminal justice system, in line with DRC Recommendation 8.13.

Recommendation H6: Require that every investigation into a WA Aboriginal death in custody include a routine disability assessment, covering autism, intellectual disability, FASD, ADHD, and ABI, and that the findings be recorded in the coronial file and reported to Parliament as part of annual deaths in custody reporting.

Section 11A: LGBTIQA+ Autistic People at the Justice Interface

11A.1 The Overlap Between Autism and LGBTIQA+ Identity

The overlap between autism and LGBTIQA+ identity is substantial and well established in the international literature. Multiple large studies report that autistic people are several times more likely than the general population to identify as lesbian, gay, bisexual, queer, asexual, transgender, non-binary, or gender diverse. The University of Cambridge Autism Research Centre study by Warrier and colleagues (2020), drawing on samples totalling 641,860 individuals including 30,892 autistic respondents, found that autistic individuals were around three to seven times more likely than non-autistic individuals to identify as transgender or gender diverse, and that autistic people were also significantly more likely to identify as non-heterosexual (Warrier et al., 2020). The Australian autism community reports similar patterns.

The explanation is contested but the prevalence is not. For the purposes of access to justice, the relevant point is that a significant proportion of autistic people in the WA justice system, as accused, victims, witnesses, forensic patients, and prisoners, are also LGBTIQA+, and a significant proportion of LGBTIQA+ people in the WA justice system are also autistic. Either intersection creates compounding vulnerability, and the system overwhelmingly fails to recognise this.

11A.2 Bullying, Discrimination, and Suicide Risk

LGBTIQA+ autistic people experience bullying, harassment, discrimination, family rejection, and exclusion from peer groups, education, and employment at rates higher than either group taken alone. Trans and gender diverse Australians report among the highest rates of psychological distress and suicidality of any population. Trans and gender diverse autistic people sit at the intersection of those risks. The combination is made worse by:

- Inaccessible mainstream LGBTIQA+ services that do not accommodate sensory and communication needs.
- Inaccessible mainstream autism services that do not affirm gender and sexual diversity.
- Family rejection, which removes a primary safeguard and increases homelessness risk.
- The interaction with intellectual disability and ADHD, which further increases isolation and reduces access to peer-led community.
- The known correlation between minority stress, complex PTSD, and entry into the justice system as either victim or accused.

TransFolk of WA describes itself as an organisation that informs, empowers, and advocates for trans and gender diverse people in WA. In its 2022 submission on the Esther Foundation and unregulated private health facilities, TransFolk of WA documented that trans and gender diverse people are at greater risk of assault, isolation, bullying, harassment, discrimination, and poorer health outcomes, often within healthcare systems. It cited research that more than 55 per cent of trans and gender diverse people avoid healthcare because they fear mistreatment. That submission was not about prisons, but prisons combine healthcare, institutional control, isolation, search powers, loss of privacy, and high dependence on staff. Those are exactly the conditions where a trans person's safety turns on whether policy is actually followed.

11A.3 WA Gender Recognition Reform and the Persistent Justice Gap

TransFolk of WA, in a joint submission with the Human Rights Law Centre, called for WA to remove outdated legal barriers that prevented trans and gender diverse people being recognised as who they are. That reform has now partly happened. WA's new gender recognition laws came into effect on 30 May 2025, ending the previous Gender Reassignment Board process and allowing legal

recognition for non-binary people. Legal recognition has improved. Justice system experience has not.

11A.4 WA Prison Policy: COPP 4.6 Trans, Gender Diverse and Intersex Prisoners

The Department of Justice operates *Commissioner's Operating Policy and Procedure 4.6 Trans, Gender Diverse and Intersex Prisoners* (COPP 4.6). The policy provides that trans, gender diverse, and intersex prisoners must be treated with dignity and respect and not discriminated against on the basis of gender identity or intersex status. It recognises that Aboriginal prisoners, disabled prisoners, culturally diverse prisoners, religious prisoners, and people from regional or remote areas may face added risks.

At prison reception, staff are required to ask the person's self-identified gender, preferred name, pronouns, preferred search arrangements, and preferred placement. However, the person is initially allocated according to their legally documented gender, and may then apply to be assessed for placement somewhere different. The policy provides that the person should be offered a single cell, access to a separate shower and toilet, and a management plan within seven days. Placement decisions must consider the person's safety, dignity, and welfare, and the safety of other prisoners and staff. Where a person seeks transfer to a prison different from their legal gender category, a two-stage assessment considers offence history, security rating, custodial behaviour, risks to the person and others, associations, medical access, clinical care needs, and at-risk status. If refused, the prisoner can seek review within 21 days.

The WA Government has confirmed that COPP 4.6 was developed after consultation with TransFolk of WA, WA AIDS Council, the Mental Health Commission, Curtin University experts, and others.

11A.5 Policy Versus Operational Reality

In the WA Legislative Council on 15 October 2025, Hon Philip Scott asked how many men who have transitioned to being women were housed in female prisons

in WA. The government's answer was nil. The Minister also confirmed that the Department considers placement of transgender, gender diverse, and intersex prisoners case by case, with reference to safety, dignity, welfare, and the safety of others.

The broader operational context is grim. In June 2026, ABC News reported that the custodial watchdog described the WA prison system as almost functionally broken, with prisoners subjected to conditions that may amount to cruel, inhuman, or degrading treatment (ABC News, 2026). The Guardian reported similar findings, including prisoners sleeping on floors and being denied basic entitlements because of systemic failure across multiple prisons (The Guardian, 2026).

That matters for trans, gender diverse, and intersex prisoners because a policy promising dignity, privacy, single-cell placement, separate showers, and access to care is only as strong as the prison system's capacity to deliver it. In a collapsing, overcrowded prison system, the case-by-case model can become code for whatever the prison can manage that day. For LGBTIQA+ autistic people, who need predictability, sensory accommodation, and trusted communication partners on top of the safeguards COPP 4.6 sets out, the gap between written policy and lived experience is dangerous.

11A.6 The Counting Problem: Deaths and Identity

Australia does not appear to keep a reliable public count of deaths in custody disaggregated by autism status or LGBTIQA+ identity. The Australian Institute of Criminology's National Deaths in Custody Programme records custody type, Indigenous status, sex, age, and cause or manner of death, but the public reporting does not give a count of autistic deceased or LGBTIQA+ deceased (AIC, 2025). Individual cases in WA coronial findings include explicit references to neurodevelopmental disability and to possible autism (see, for example, the *Parnell* coronial finding discussed at Section 11B). That shows that at least some deaths in custody involve people with diagnosed or suspected autism. It does not give a count, because the system does not collect or publish one.

For LGBTIQA+ people the position is the same. The national deaths in custody data do not publicly report deaths by sexual orientation, gender identity, trans status, or intersex status. An older Australian Institute of Criminology paper on transgender prisoners noted that there had been at least one recent death in custody involving a transgender person and warned that trans prisoners are at high risk of self-harm and sexual assault in custody. More recently, Marjorie Harwood, a trans woman in Tasmania, has been the subject of renewed calls for a coronial inquest. She died in 2018 after refusing life-sustaining medical treatment following an alleged sexual assault while incarcerated. She had repeatedly been housed in a men's prison even though she was recognised as a trans woman (Star Observer, 2026).

In 2024 to 2025, AIC reported 113 deaths in custody in Australia: 90 in prison custody, 22 in police custody or custody-related operations, and 1 in youth detention; 33 were Indigenous deaths and 80 were non-Indigenous deaths (AIC, 2025). The Australian Institute of Health and Welfare prison health report records that between 1979-80 and 2021-22 there were 3,310 deaths in custody, including 2,157 deaths in prison custody (AIHW, 2023). None of that reporting tells us how many were autistic, intellectually disabled, or LGBTIQA+. The absence is itself a finding. People who are not counted are people whose deaths cannot be prevented.

11A.7 Recommendations Arising from Section 11A

Recommendation N1: LRCWA should recommend that the WA Government carry out, in consultation with TransFolk of WA, SWAN, People With Disabilities WA, the WA AIDS Council, and Aboriginal community-controlled LGBTIQA+ organisations, a comprehensive review of COPP 4.6 against the lived experience of LGBTIQA+ disabled prisoners, including autistic, intellectually disabled, and mental-health-affected prisoners.

Recommendation N2: LRCWA should recommend that WA deaths in custody data collection and coronial reporting be amended to record, with appropriate privacy protections, neurodevelopmental disability status (autism, intellectual

disability, ADHD, FASD) and LGBTIQA+ identity, so that pattern detection across these intersections is possible.

Recommendation N3: LRCWA should recommend that the WA Department of Justice publish annual data on the number, placement, search arrangements, single-cell access, healthcare access, and incident exposure of trans, gender diverse, and intersex prisoners, with disability disaggregation.

Recommendation N4: LRCWA should recommend that a community visitor scheme (Recommendation D2) include LGBTIQA+ community visitors and disability community visitors with relevant lived experience, to ensure the perspective of the most isolated cohorts is independently represented.

Recommendation N5: LRCWA should recommend that all justice system workforce training mandated by the Recommendations of this submission (A4) include explicit content on the intersection of autism, intellectual disability, mental health, and LGBTIQA+ identity, addressing minority stress, family rejection, and suicide risk.

Section 11B: Suicide, Autism, and the Diagnostic Access Gap

11B.1 The Suicide Risk for Autistic People

Autistic adults experience suicidal ideation, suicide attempts, and death by suicide at rates substantially higher than the general population. Evidence shows that autistic people are several times more likely to die by suicide than non-autistic people, with particularly high risk among autistic women, autistic people with co-occurring ADHD, autistic people with co-occurring intellectual disability, and autistic people in custodial settings (Cassidy et al., 2018; University of Queensland, 2024; Hirvikoski et al., 2016). Hirvikoski and colleagues found that autistic adults without intellectual disability had a ninefold higher rate of suicide than the general population. Cassidy and colleagues found that around 66 per

cent of newly diagnosed autistic adults reported suicidal ideation, and around 35 per cent reported attempted suicide.

Co-occurring autism and ADHD is a particularly high-risk profile. ADHD on its own elevates suicide risk. The combination of autism and ADHD compounds executive function difficulties, emotional regulation difficulties, social rejection sensitivity, and impulsive risk-taking. Population-level estimates suggest that 30 to 80 per cent of autistic people also meet criteria for ADHD, depending on diagnostic threshold and population studied (Antshel and Russo, 2019).

For autistic people involved with the justice system the risk is compounded again. Custodial environments combine sensory overload, removal of routine and special interests, separation from supports, exposure to violence, and confinement with people who are themselves unwell. Suicide is the leading cause of death in WA youth custody and a leading cause of death in WA adult custody. The intersection with autism is almost entirely unmeasured (Section 11A.6).

11B.2 Robert Fredrick Parnell: A WA Coronial Illustration

The coronial finding in *Parnell* ([2024] WACOR 39), delivered by Coroner MAG Jenkin on 5 September 2024, shows the pattern. Robert Fredrick Parnell was 29 years old when he died at Albany Health Campus on 16 May 2022 from butane and propane toxicity, after inhaling the propellants of a can of canola oil spray (Coroner's Court of Western Australia, 2024). At the time of his death he was a sentenced prisoner at Albany Regional Prison.

Robert's medical history, as recorded in the coronial finding, included diagnosed Attention Deficit Hyperactivity Disorder, dyslexia, anxiety, depression, cognitive and intellectual disability, and a history of polysubstance use that included solvent inhalation from the age of about 13. The coronial finding records, at paragraph 15, that during an earlier period of custody in 2018 a Mental Health Team meeting noted in respect of Robert that there were "soft mental health signs related to intellectual limitations and possible autism spectrum disorder,

resulting in limited coping/adaptive capacity". That note appears in the medical record. It was not followed by a referral for diagnostic assessment, by a Behaviour Support Plan reflecting the suspected profile, by a communication assessment, or by management on the At Risk Management System, the Department's primary suicide prevention strategy. The coronial finding records, at paragraph 16, that Robert was never managed on the At Risk Management System, that during the period he was at Albany Regional Prison there was no evidence he experienced any significant mental health issues, and that he never reported any suicidal or self-harm ideation. He had, however, reported vague suicidal ideation in the past.

The Parnell finding records that Robert had been described as "easily influenced by others" and as having difficulty "knowing the difference between right and wrong", and that he was someone who would just follow others to "be part of the crowd" (paragraph 7). It records 224 convictions and a five-year-six-month sentence. It records that he was in receipt of the disability support pension, that he had not had stable accommodation before his last admission to prison in 2019, and that he did not have a regular GP. It records that he was loved by his family and by other prisoners. It records that his diagnosed and suspected disabilities were known to the Department, including the 2018 file note of possible autism, and that no diagnostic clarification or autism-specific accommodation followed.

The Parnell case shows the safeguarding failures discussed in Sections 5, 12, 13A, and 14 of this submission. A young man with ADHD, intellectual disability, dyslexia, possible autism, a polysubstance use history, prior solvent inhalation, vague past suicidal ideation, family disruption, and 224 convictions was managed in a mainstream prison without disability-specific support, without diagnostic clarification of his neurodevelopmental profile, and without inclusion on the At Risk Management System. He died from solvent inhalation, the same harm pattern that began in his childhood at around age 13.

11B.3 The WA Adult Autism Diagnostic Access Gap

The “possible autism spectrum disorder” note in Robert’s 2018 medical record was never resolved into a formal diagnosis. That is not unusual. Western Australia does not provide a free public diagnostic pathway for autism in adults. Adults seeking an autism diagnosis in WA must access private psychologists or psychiatrists, typically at costs in the range of $1,500 to $3,500 or higher, with very limited Medicare rebate access. People in custody, people on the Disability Support Pension, people experiencing homelessness, people with intellectual disability and limited literacy, Aboriginal people in remote areas, and people in NDIS-funded SIL accommodation are systematically excluded from this private market.

The contrast with the paediatric pathway is startling. The WA Child Development Service operates a publicly funded autism assessment pathway for children aged 0 to 17, with no out-of-pocket cost. For adults, no equivalent public pathway exists in the WA Health system, in the Department of Justice, or under any Commonwealth scheme. The Commonwealth’s announced Thriving Kids reform package, even if put in place at full scope, would not address adult diagnostic access – and will provide a mere estimated $300-$500 per child.

The absence of a free public adult autism diagnostic pathway in WA is itself an access to justice issue. It means that:

- Coronial findings record “possible autism” rather than diagnosed autism, with all the legal and policy consequences that follow.
- CLMIA section 9 mental impairment determinations cannot turn on diagnoses that the accused has never been able to afford.
- NDIS access decisions, which depend on documented permanent disability, exclude adults who cannot pay for diagnostic confirmation.
- Sentencing courts cannot apply Verdins principles, the recognition of mental impairment as a mitigating factor, where the impairment is suspected but undiagnosed.

- Guardianship and Administration Act proceedings cannot accommodate disability where the disability is unidentified.
- Workers compensation, CIC, and civil litigation cannot rely on disability-specific procedural accommodations where the disability is unconfirmed.

The Commonwealth's "Thriving Kids" reform package, focused on early childhood intervention, will not address the deaths, suicides, justice system involvement, and lifelong harm experienced by the adult autistic population. The package responds to a political problem about NDIS cost growth in children, not to the outcomes for autistic adults documented throughout this submission. Without a free public adult diagnostic pathway, every reform mentioned in this submission, every CLMIA amendment, every Verdins application, every NDIS plan, every coronial finding, will continue to be undermined by the simple fact that the autism in question has not been formally diagnosed.

11B.4 Recommendations Arising from Section 11B

This section is in scope for Project 115 only at the justice interface. Whether WA Health establishes a public adult autism diagnostic pathway is a matter for WA Health, not for the LRCWA. The recommendations below are justice-side only. The diagnostic gap is left in the body of this section as evidence of why the justice-side recommendations matter.

Recommendation O1: The WA Department of Justice should put in place a routine in-custody assessment pathway (other than FIST) where prison health, mental health, or custodial records flag possible autism, intellectual disability, FASD, ABI, or other neurodevelopmental difference. A positive finding should automatically trigger Communication Partner referral, ARMS review, and review of sentencing under the Verdins principles where relevant.

Recommendation O2: Autistic adults in custody who also have ADHD, intellectual disability, mental illness, a polysubstance use history, or LGBTIQA+ identity should be treated as a high suicide risk cohort, with the ARMS framework

and prison health responses adjusted to reflect the elevated risk shown in the international literature and in the Parnell finding.

Recommendation O3: Coronial findings about people with diagnosed or suspected neurodevelopmental disability, including Parnell, should be reviewed systematically by the multi-agency working group recommended at J1, with findings reported to Parliament.

Section 12: The NDIS: A Collapsing Safety Net at the Justice Interface

12.1 The CRPD Purpose of the NDIS

The National Disability Insurance Scheme (NDIS) was created by the National Disability Insurance Scheme Act 2013 (Cth) after the Productivity Commission's 2011 report recommended a national no-fault disability insurance scheme to fund reasonable and necessary supports for people with significant and permanent disability. The NDIS was meant to be Australia's main tool for meeting its CRPD obligation under Article 19: to provide the supports that allow people with disability to live independently and take part in community life.

When it launched, the NDIS was a genuine change in direction. It moved away from block-funded disability services with little individual choice and towards individually controlled funding that let people with disability buy the supports they needed to participate in community life, including in the justice system. That original design was rights-based, participant-centred, and grounded in the CRPD.

By 2026, the NDIS looks very different from that original design. It is still the main funding mechanism for disability supports for autistic people in Australia. But it is being actively reshaped by administrative tightening, access reviews, and the NDIS Amendment (Securing the NDIS for Future Generations) Bill 2026 in ways that directly contradict its original rights-based foundation.

12.2 The Justice Transition Project: The NDIA's Own Diagnosis

The NDIA's own internal assessment of how the NDIS is failing people at the justice interface is in the Justice Transition Project report, obtained under Freedom of Information request (FOI-25-26-1495). The report found:

- Over 2,100 NDIS participants need a specialised justice planning response. The true number in contact with the justice system is much larger, obscured by data gaps.
- Some participants stay in custody for extended periods not because of their offence or risk level, but because there are no safe community support options, housing cannot be secured, or the NDIA and state agencies are disputing who is responsible.
- The NDIS's proof of identity requirements are a significant barrier for people who have been in custody and do not have documentation.
- NDIS planning for justice-involved participants is characterised by administrative delays and inadequate housing.
- Court-imposed conditions can accidentally set people with disability on a path toward reoffending, because courts have limited capacity to adjust support requirements for people with disability or First Nations people.

These are not the findings of NDIS critics. They are the NDIA's own internal assessment. They show that the NDIS is, by its own agency's measure, failing its most vulnerable participants at the most critical point of transition.

12.3 OICS Findings on the NDIS in Custody

The OICS (2024) found significant barriers stopping both adults and young people in custody from receiving NDIS supports while incarcerated:

- Over-reliance on self-reporting at intake, meaning autistic people who do not disclose their disability never receive NDIS supports in prison.
- An under-resourced Disability Coordination Team managing a custodial population of over 7,000 people with only 2.5 FTE staff.
- No tailored criminogenic treatment programmes for people with intellectual disability or autism.

- Information silos between youth and adult custodial systems, meaning disability records do not follow a person from one system to the other.

The ratio of 2.5 FTE Disability Coordination officers for over 7,000 prisoners is extraordinary. In theory, each officer is responsible for the disability planning of around 2,800 people. No meaningful disability support planning is possible at that ratio.

12.4 The NDIS Amendment (Securing the NDIS for Future Generations) Bill 2026

The NDIS Amendment (Securing the NDIS for Future Generations) Bill 2026 was introduced to Parliament on 14 May 2026. It is a 109-page Bill that proposes fundamental changes to NDIS access, planning, and funding. The government expects the changes to remove around 300,000 participants from the Scheme, or prevent their access to it, saving more than $36 billion over four years (ABC News, 2026).

All 12 Disability Representative Organisations (DROs), including the Australian Autism Alliance, FPDN, and People with Disability Australia, have said the Bill should not proceed in its current form or on the current timetable (DRO joint submission, 2026). The joint state and territory government submission to the Senate inquiry warned that the proposed changes were “inconsistent with commitments by all governments” made at National Cabinet in January 2026 and created “a significant risk that people with disability will end up in hospitals or other settings that are inappropriate and unable to meet their needs, or have no access to services at all” (ABC News, 2026).

The key provisions of the 2026 Bill that directly affect autistic people at the justice interface are as follows.

Schedule 1, Part 4: Ministerial determinations on support funding. This provision gives the Minister power to reduce funding for whole categories of

supports, for all or defined classes of participants, without individual appeal rights before the reduction takes effect. Villamanta's principal solicitor Naomi Anderson warned that this would give "the current and future ministers unrestricted access to the NDIS budget. Whenever they need to bolster the federal budget, they could simply withdraw more funding" (ABC News, 2026). For autistic people on community supervision orders who have NDIS-funded supports built into their supervision conditions, a Ministerial determination reducing those supports would amount to an administrative change to their supervision conditions, with no due process.

Schedule 1, Part 8: Tightening permanence requirements. The Bill requires, as a condition of continued NDIS access, that "all appropriate treatments to remedy or alleviate an impairment have been undertaken." Autism is not a condition that can be "treated" or "remedied". It is a lifelong neurological difference, and this provision does not apply to it. But the "appropriate treatment" criterion is assessed regardless of personal financial circumstances or geographic location. A person in remote WA who has never been able to access a comprehensive assessment, who has never had the money for private therapeutic interventions, and who lives in an area with no specialist services, could be found not to have met the permanence requirement (Justice and Equity Centre, 2026; Villamanta, 2025).

Schedule 1, Part 7: Plan suspensions. The Bill allows the NDIA to suspend a plan after failed contact and revoke participant status after 90 days of suspension. Autistic people in custody, in mental health crisis, or moving between addresses often cannot maintain consistent contact with the NDIA. Automatic revocation after 90 days of non-contact would cut the NDIS status of the most vulnerable participants at exactly the point they need it most.

Schedule 1, Part 5: Unspent funds. The Bill provides that unspent funds from a previous plan are not carried forward to the next. For autistic people with episodic and crisis-driven support needs, the ability to carry forward unspent funds

provides a critical safety valve for periods of acute need. Removing that flexibility takes away a tool that many participants rely on.

1:3 SIL ratio. The 2023 NDIS Review recommended that participants needing 24/7 living supports be generally funded at a 1:3 ratio (one support worker for three participants). That recommendation has become entrenched as policy in the planning framework, reflected in Schedule 4 of the 2026 Bill. For autistic people with complex support needs, complex behaviour, or CSAM-related offending histories, placement in shared accommodation at a 1:3 ratio creates both safety and management risks. OICS (2024) found that people with intellectual disability in protection units were sometimes placed alongside people with sexual offending histories. The 1:3 SIL model as a default, without adequate individual assessment of compatibility and risk, replicates that danger in community settings after release.

12.5 Dickinson et al. (2024): Research on NDIS and Formerly Incarcerated People

Dickinson, Yates, Dodd, Buick, Doyle, and Yates (2024) conducted qualitative research with NDIS providers, disability organisations, and a police liaison officer on choice and control for formerly incarcerated people. Service providers described the impact of funding changes: “Because of the change in funding, you don’t have those local areas that pick up the people who don’t meet those criteria anymore… I’m watching people slip through.” The NDIA’s position, “we’re not funding services to stop people from reoffending; that’s justice’s responsibility,” was criticised for failing to recognise that disability and offending behaviour are intertwined.

The National Disability Data Asset (NDDA) Pilot (2024) found that NSW young people with disability were 60% more likely to re-offend within two years than those without disability. Research on throughcare programmes found that community reintegration support for people leaving prison reduced days in

custody by 66%, new custody episodes by 63%, and proven offences by 62%, with criminal justice cost savings of $10 to 16 million per annual cohort (PMC, 2025). The economic case for adequate NDIS supports at the justice interface is strong. The 2026 Bill's savings projections do not appear to account for the downstream justice system costs of removing those supports.

12.6 Senate Hearing Testimony

Evidence to the Senate Community Affairs Legislation Committee inquiry in June 2026 described 40,000 children removed from the NDIS in the first nine months of 2025, mostly children under 9 years, with no alternative foundational supports in place (Senate hearing, 2026). For autistic children in WA, the "Thriving Kids" programme, scheduled to divert children under 9 with autism from the NDIS to foundational supports from October 2026, has not yet been designed or resourced. Removing children from the NDIS before foundational supports exist is exactly the sequencing error that the DRO joint submission warned against.

12.7 Recommendations Arising from Section 12

Recommendation I1: Legislate mandatory joint planning between CLMIA supervision orders and NDIS plans. No person should be released under a CLMIA community supervision order without an active NDIS plan that funds supports compatible with the supervision requirements. Extend this obligation to HRSO supervision orders.

Recommendation I2: Legislate a "no release without a funded plan" principle. No person with disability held in WA custody may be released to the community under a supervision order without an active, funded NDIS plan in place.

Recommendation I3: Legislate NDIS Justice Liaison Officers at every WA custodial facility, with resourcing adequate for the custodial population (not 2.5 FTE for 7,000 prisoners).

Recommendation I4: Advocate to the Commonwealth that the NDIS Amendment (Securing the NDIS for Future Generations) Bill 2026 be amended to: (a) protect autistic people's access to the NDIS by ensuring the permanence test does not require treatment of a lifelong condition; (b) preserve post-custodial NDIS plan continuity by providing that incarceration or crisis does not trigger plan suspension; (c) subject Ministerial determination powers to individual review rights; (d) ensure no participant is removed from the NDIS before foundational supports are fully in place and accessible.

Recommendation I5: Urgently put DRC Recommendation 8.18 into effect: NDIA-funded transition supports should begin at least 90 days before a person is released from custody.

Recommendation I6: Reject the 1:3 SIL ratio as a default for autistic people with complex support needs or offending histories. Require individual assessment of support ratio requirements, including compatibility with supervision conditions and safety of all residents.

Recommendation I7: Properly resource the NDIS-CLMIA community supervision interface, including a funded forensic disability support workforce, transition accommodation that is not limited to SIL, and an NDIS Quality and Safeguards Commission protocol for participants under CLMIA orders. *PYM* and *NG* (both 2024) show the basic operational lesson: an Act that contemplates community supervision cannot operate without funded community support (Section 4.4).

Section 13: Workers' Compensation, Civil Compensation, and Access Barriers

13.1 The Criminal Injuries Compensation Scheme

The Criminal Injuries Compensation Act 2003 (WA) provides compensation for victims of crime who have been injured as a result of a criminal act. People with disability are among the most frequent victims of crime, yet face specific barriers when accessing the CIC scheme. These include difficulty making and documenting complaints, communication barriers at the police reporting stage, and the complex interaction between CIC awards and NDIS funding.

13.2 Re Richards [2022] WADC 100: NDIS Deductibility

Re Richards [2022] WADC 100 was decided by Gething DCJ on 23 November 2022. The case arose from a mental health crisis involving Alexandra Moore, who assaulted police sergeant Peter Richards while officers were trying to escort her to Busselton Hospital under the Mental Health Act. Richards suffered PTSD and major depressive disorder. The key legal question was whether NDIS payments received by Richards had to be deducted from his CIC compensation award under section 42(3) of the CIC Act.

The Court held that NDIS payments are not "received for the injury or loss" within section 42(3) and are therefore not deducted from compensation. NDIS funding supports disability generally, not a specific injury. This ruling protects NDIS participants who are also CIC applicants from being penalised twice, and is a significant access to justice clarification.

The case also shows the disability dimensions of incidents at the crossroads of mental health crisis and criminal justice. Moore's mental health presentation was the trigger for the entire incident. The absence of a disability-informed crisis

response, where police are not the right first contact for a person in acute mental health crisis, placed both Moore and Richards in unnecessary danger.

13.2A Re SR [2025] WADC 37, Re SMB [2025] WADC 24, and Ex Parte ABC [2025] WADC 17: Time, Privacy, and Process Barriers

Re SR [2025] WADC 37 was decided by Flynn DCJ on 27 June 2025. SR, born 18 September 1978, was sexually abused by his stepfather between the ages of 6 and 16. He disclosed the abuse to his mother in July 2004, aged 25, and signed a police statement. Police investigated but found insufficient evidence to charge. SR lodged a CIC application on 5 September 2022, aged 43. That was 24 years after the three-year statutory period expired. The assessor refused the application. The assessor accepted that SR's significant mental health issues across many years supported allowing the application to proceed out of time, but found that factor outweighed by the delay and lack of substantive merit. Flynn DCJ upheld the refusal.

The SR case shows the central paradox of CIC time limits for people with disability arising from criminal injury. The psychological harm that creates the CIC entitlement is often the very harm that stops timely lodgement of the application. The Court accepted at [11], citing *Re CJR* [2023] WADC 111 [51], that the three-year limitation period is a substantive provision in the Act itself, not a procedural technicality. The just test for extension requires the court to weigh merits and delay together. Where the delay is disability-related, where the person's psychological injury from the abuse itself prevents them from engaging with the legal system, that disability dimension should carry significant weight in the extension analysis. The 2022 Act provides the just test but no explicit disability gateway. This submission recommends an explicit provision in the CIC Act requiring the assessor to give weight to disability-related incapacity to

engage with the legal system when deciding whether it is just to extend time, and to do so consistently with CRPD Articles 13 and 16.

Re SMB [2025] WADC 24 concerned an application to amend a CIC application. The use of pseudonymisation shows this was a party whose privacy warranted protection in the public interest. The procedural rigidity of CIC amendment processes may itself be a barrier for claimants who have difficulty managing legal process, including those with cognitive, communication, or psychological disability. *Ex Parte ABC* [2025] WADC 17 is a Restraining Orders Act case involving an appeal from Family Court parenting orders, again with pseudonymisation. The intersection of Family Court parenting orders and the Restraining Orders Act commonly arises in domestic violence proceedings, where disability is prevalent on both sides and where children's exposure to family violence is itself a disability risk factor.

The systematic use of pseudonyms in proceedings involving vulnerable parties is a well-established but under-analysed access mechanism. It allows victims of trauma to seek legal redress without public identification. But anonymity alone does not address the substantive barriers of legal complexity, emotional capacity, and support needs. This submission recommends the systematic provision of support persons and communication assistance for pseudonymised parties in civil proceedings. The grant of anonymity is likely to correlate with heightened vulnerability that warrants substantive procedural accommodation.

13.3 Sweetman [2020] WACIC 13: Aaron Pajich's Father

The CIC claim by Aaron Pajich's father, Keith Aaron Sweetman, discussed in the context of the *Lilley* case in Section 6, shows the access to justice barriers for family members of autistic victims. The Assessor awarded $25,000 for mental and nervous shock, noting the difficulty of separating compensable injury from non-compensable stressors alongside the applicant's own psychological

presentation. Keith is also autistic, and at the time of Aaron's trial was due to give victim testimony at a public hearing of the Royal Commission into Institutional Responses to Child Sexual Abuse in South Australia.

Aaron Pajich's vulnerability was exploited by his killers. His father's guilt about having restricted Aaron's independence, believing this may have made him more vulnerable, shows the lived complexity of raising an autistic young person in a world that does not adequately protect neurodivergent people from exploitation.

13.4 Workers' Compensation and Disability

The workers' compensation and disability intersection arises when a person sustains an injury at work that results in disability, when a person with disability is injured at work, or when the work environment has failed to provide reasonable adjustments. People with pre-existing ASD or intellectual disability who are injured at work may face discrimination in the claims process, inadequate accommodation of communication needs, and difficulty navigating complex administrative and legal procedures.

The Equal Opportunity Act 1984 (WA) prohibits discrimination on the ground of impairment in employment, but its enforcement mechanisms are not adequately accessible for people with cognitive or communication disability.

13.4A Morgan v Roman Catholic Archbishop [2025] WADC 38 and Lourey v WACHS [2025] WADC 19: Workers Compensation and Psychological Injury

Morgan v Roman Catholic Archbishop of Perth [2025] WADC 38 was decided by Curwood DCJ in 2025. Nicholas John Morgan sought workers compensation from the Roman Catholic Archbishop of Perth. The setting, an educational and church organisation, shows the claim arose in a Catholic school or Church-

associated workplace. Workers compensation claims from church and educational settings are disproportionately likely to involve mental and psychological injury, including injury from exposure to institutional abuse, high-stress working conditions, or the secondary trauma of working with vulnerable populations.

The Morgan case shows the structural barriers facing workers with psychological disability in the workers compensation arbitration system. Claims for psychological injury sit at the intersection of disability law, employment law, and access to justice. Workers with pre-existing mental health conditions who then suffer workplace psychological injury face particular barriers. The aggravation test in WA's workers compensation framework can disadvantage claimants whose pre-existing conditions are characterised as the substantial contributing factor to incapacity, rather than the workplace event. The adversarial and technical character of arbitration is especially unsuitable for claimants with psychological injury, who often lack the emotional resources to sustain contested proceedings.

Lourey v WA Country Health Service [2025] WADC 19 was decided by Cormann DCJ in 2025. The case is an appeal from workers compensation arbitration, with WACHS, a public health service, as employer. Employment with WACHS in a regional setting raises compounded barriers for health workers in rural areas: physical remoteness from legal services, psychological barriers arising from disability or injury, and difficulty accessing specialist medico-legal opinion in regional WA. Rural disability workers face a double disadvantage in compensation claims. They are more likely to work in under-resourced settings that generate the injuries giving rise to claims, and they are less likely to have access to legal representation and support services to pursue those claims.

The Morgan and Lourey cases together support a recommendation for accessible, disability-sensitive pathways within the workers compensation arbitration system, including communication support, simplified procedure for psychological injury claims, and resourced legal assistance for rural and regional

claimants. Both cases engage CRPD Article 27 (work and employment on an equal basis with others, including in compensation systems) and Article 13 (access to justice, including access to legal representation for rural and remote claimants).

13.4B The NDIS Sustainability Bill 2026 and the Forced Diversion of Workplace and Motor Vehicle Injury into State Compensation Schemes

The Commonwealth NDIS Amendment (Securing the NDIS for Future Generations) Bill 2026 introduces a structural change to the relationship between the NDIS and State workers compensation and motor vehicle accident schemes. It will significantly increase pressure on the WA workers compensation system, the WA motor vehicle injury scheme, and the WA District Court arbitration appellate pathway. SWAN identifies this as a critical access to justice issue for Project 115. The change converts disability-related support need into compensation litigation for a cohort that previously had access to the NDIS as the primary support pathway.

The Bill was introduced on 14 May 2026 and is subject to Senate Community Affairs Legislation Committee inquiry, with submissions closing 29 May 2026 (Justice and Equity Centre, 2026). The Commonwealth Department of Health, Disability and Ageing fact sheet confirms that from 1 January 2028, “applicants will need to disclose if they are eligible for or accessing supports from a workers’ compensation or motor vehicle accident scheme for relevant impairments”, and that “people who are eligible for or are receiving support for their impairment from workers’ compensation or motor vehicle accident schemes may no longer be eligible for the NDIS” (Department of Health, Disability and Ageing, 2026).

The practical effect is that an impairment caused by a workplace or motor vehicle accident, where a compensation scheme exists for that impairment, is excluded from the NDIS access assessment. SWAN’s reading of the Bill and the

explanatory memorandum is that this is not a coordination provision like the existing sections 104 and 105 of the NDIS Act, which allow the CEO to require pursuit of compensation, take over claims, and apply a Compensation Reduction Amount to NDIS supports. Sections 104 and 105 leave the participant within the NDIS while coordinating with the compensation scheme. The 2026 Bill works at the access stage, excluding the relevant impairment from eligibility before any NDIS plan is developed.

The implications for the WA access to justice system are serious.

First, the exclusion converts long-term disability support need into compensation entitlement litigation. Workers compensation in WA is governed by the Workers Compensation and Injury Management Act 2023 (WA) and arbitrated through WorkCover WA, with appeals to the District Court of WA. It is designed for medical costs, rehabilitation, and income replacement. It is not designed to fund lifetime support work, accommodation modification, assistive technology, or ongoing therapy for a person with a permanent acquired disability. The Bill places permanent disability support need into a scheme that was not designed to meet it.

Second, where workers compensation entitlements run out, where the compensation scheme rejects the claim, or where the compensation paid is insufficient to fund lifetime support, the person is left with a permanent disability and no NDIS pathway, because their impairment was excluded from eligibility at the assessment stage (Loving Life Care, 2026). The exclusion is not contingent on the compensation scheme continuing to pay. It applies regardless of whether the compensation actually replaces the supports the NDIS would have provided.

Third, the exclusion compounds the existing access to justice barriers documented in *Morgan v Roman Catholic Archbishop* [2025] WADC 38 and *Lourey v WA Country Health Service* [2025] WADC 19 (Section 13.4A). Workers with psychological injury and workers with autism, intellectual disability, or other neurodevelopmental disability are already disadvantaged in the workers compensation system by the aggravation test, the adversarial arbitration

structure, communication barriers, and the cost of medico-legal opinion. Under the 2026 Bill, an autistic worker who acquires a workplace injury producing additional permanent impairment will be required to pursue that claim through the compensation system first, with all the access barriers identified at Section 13.4A, before establishing any NDIS access for the workplace-acquired impairment, and possibly without any subsequent NDIS access at all.

Fourth, the change disproportionately affects cohorts already over-represented in the WA justice system. Autistic and intellectually disabled workers are over-represented in low-paid, casualised, manual, and gig work where workplace injury rates are high and workers compensation literacy is low. Aboriginal workers, regional and remote workers, and workers with limited English are over-represented in the same workforce categories. The Bill places the cost of accessing disability supports on the workers least equipped to navigate workers compensation arbitration, with the District Court psychological injury appeal pathway documented in *Morgan* and *Lourey* as the realistic final stage.

Fifth, motor vehicle accident scheme exclusion affects similar cohorts. Aboriginal autistic people in regional WA are disproportionately exposed to road trauma. Children and young people with neurodevelopmental disability are over-represented as passengers and pedestrians in road incidents. Excluding motor vehicle accident scheme impairments from NDIS access converts a class of catastrophic disability into a litigation entitlement that requires legal representation, expert medical evidence, and capacity to engage with a contested adversarial process.

Sixth, SWAN's position is that the workers compensation and motor vehicle accident exclusion will increase pressure on the criminal justice system. It removes a structural safeguard against poverty, homelessness, untreated psychological injury, and substance use that has previously functioned, however imperfectly, through the NDIS. The pathway from undiagnosed acquired brain injury to police contact, custody, and coronial inquest is documented in this submission at Sections 3, 5, 6, 11B, and 14. The 2026 Bill makes that pathway

more likely for people who acquire disability through workplace or motor vehicle incidents.

Seventh, the Bill provides no transitional protection adequate to the scale of the change. The Commonwealth's stated arrangement is that participants already accessing the NDIS will continue to have their access to compensation schemes managed under the existing sections 104 and 105 framework, but new applicants from 1 January 2028 will be subject to the new exclusionary access provisions (Department of Health, Disability and Ageing, 2026). The cohort most affected is the cohort of future autistic, intellectually disabled, ABI-affected, and FASD-affected workers and road users whose lives will be reshaped by an event that, under current legislation, would have given them NDIS access.

SWAN's position is that this change cannot be treated as a Commonwealth NDIS reform affecting only the Commonwealth. It will produce a wave of WA District Court psychological injury and personal injury matters involving claimants with disability, exactly the cohort least equipped to navigate that process. It will also deposit unmet support need into the WA justice and custodial systems documented throughout this submission. The Project 115 recommendations on workers compensation access (K1C above) need to be read alongside this Commonwealth reform. The WA Government's position on the Bill needs to address the additional pressure the WA workers compensation and motor vehicle injury systems will bear if the Bill proceeds in its current form.

13.5 Civil Litigation Access Barriers

People with disability face systematic access barriers in civil litigation. Limitation periods do not accommodate disability-related delay in recognising that a legal wrong has occurred. Costs orders can deter people with disability from pursuing meritorious claims. Expert evidence on disability can be inaccessible without legal assistance. The SAT, while more accessible than the courts in some respects, still runs a highly formalised process that presents barriers for people with communication disability.

The Project 114 findings on “gag laws” in WA guardianship proceedings are relevant here. Western Australia has the most restrictive confidentiality provisions in Australia for guardianship proceedings, preventing represented persons from publicly discussing their own experiences. This blocks community advocacy, peer support, and systemic reform built on lived experience.

13.6 Recommendations Arising from Section 13

Recommendation K1: Amend the Criminal Injuries Compensation Act 2003 (WA) to expressly accommodate people with disability throughout the claims process, including communication support, plain language documentation, and extended limitation periods.

Recommendation K1A: Amend the CIC Act to require the assessor and the District Court, when applying the just test under section 9 for extension of time, to give specific weight to disability-related incapacity to engage with the legal system, including the impact of the very psychological injury for which compensation is sought. The provision should reflect *Re SR* [2025] WADC 37 and the CRPD Articles 13 and 16 obligation to make redress meaningfully available to victims of violence with disability.

Recommendation K1B: Develop a CIC practice direction providing for the systematic offer of support persons, communication assistance, and procedural accommodation to pseudonymised parties and to other parties identifiable as having disability, consistent with the pattern in *Re SMB* [2025] WADC 24 and *Ex Parte ABC* [2025] WADC 17.

Recommendation K1C: Set up a disability-accessible psychological injury pathway within the WA workers compensation system, with simplified procedure, communication accommodation, and resourced legal assistance for rural and regional claimants, responding to *Morgan v Roman Catholic Archbishop* [2025] WADC 38 and *Lourey v WACHS* [2025] WADC 19.

Recommendation K1D: Recommend that the WA Government formally oppose the workers compensation and motor vehicle accident scheme exclusion provisions of the Commonwealth NDIS Amendment (Securing the NDIS for Future Generations) Bill 2026 in their current form, and advocate for the retention of the existing sections 104 and 105 coordination framework rather than an access-stage exclusion. The WA Government should specifically identify and quantify, in its Commonwealth submission, the additional load that the proposed exclusion will impose on WorkCover WA, the WA motor vehicle injury scheme, the District Court arbitration appellate pathway, and the WA justice and custodial systems. The position should reflect the access to justice impact documented at Section 13.4B and the disability cohorts most affected, including autistic, intellectually disabled, ABI-affected, FASD-affected, Aboriginal, regional, and culturally and linguistically diverse workers and road users.

Recommendation K2: Recommend that SAT adopt a disability access framework consistent with CRPD Article 13 for all proceedings involving parties with disability, including guardianship, accommodation, and medical treatment decisions.

Recommendation K3: Extend legal aid and assistance for people with disability across all civil, family, guardianship, and child protection proceedings.

Section 13A: Structural Safeguarding and the Justice Interface

SWAN's analysis of access to justice for people with disability cannot be separated from the safeguarding structures that surround disabled people every day. People become victims of crime, accused persons, neglected residents, deceased subjects of coronial inquests, and parties to civil compensation proceedings because the systems that should have kept them safe failed before the justice system was ever involved. Justice reform that only addresses what happens inside the courtroom will not change those outcomes. SWAN therefore

endorses a structural safeguarding approach as developed in *A New Safeguarding Model for the NDIS: White Paper for Free and Equal Australia* (the Safeguarding White Paper), and adopts its core arguments where they bear on the LRCWA's Terms of Reference.

13A.1 The Origin and Limits of the Current Safeguards Model

The NDIS Quality and Safeguards Commission has always operated on a model that was not designed with people in mind. The framework was taken from a computer auditing and risk-management approach developed in the 1990s, originally designed to manage organisational risk, liability, and exposure, not human safety or wellbeing. Its primary concern was risk to the institution, not risk to the person. When that framework was transplanted into disability policy, that orientation never truly changed.

Later, a small group of respected thinkers, including Bruce Bonyhady, Kate Fulton, Marita Walker, Michael Kendrick, and Robbi Williams, produced material intended only as discussion papers, not as a finished safeguarding system. Over time, those ideas were treated as settled doctrine, and the underlying risk logic of the original model was left largely unexamined. The result is the developmental, preventative, and corrective framework that now structures NDIS safeguarding, the State's broader response to violence and neglect of disabled people, and, indirectly, the WA justice system's response to disabled victims and accused.

The developmental, preventative, and corrective framework is not useless. It helps as far as it goes. But under the NDIS and in much of WA practice, developmental safeguards have been interpreted almost entirely as something that should happen within the person. Responsibility has been placed on individuals to build skills, capacity, resilience, and self-advocacy, regardless of whether they had the social, economic, physical, or relational capital needed to do so. The model paid little attention to other people, environments, or the preconditions for safety that exist outside the individual. In effect, it asked those with the least capital of any kind to generate more of it, while absolving systems, institutions, and governments of their role in creating the conditions that make

safety possible. The system then failed to recognise that mismatch as a structural problem.

The developmental, preventative, and corrective framework is limited not because development is unimportant, but because development was severed from context. It overlooked Robbi Williams' work on citizen capital, and it failed to recognise that safeguards already exist, or should exist, throughout the world that disabled people live in.

13A.2 The Ecology of Safeguards

Safeguards exist in accessible and inclusive housing. They exist in transport, in employment, in information that people can understand. They exist in processes, systems, buildings, and attitudes. They exist in neighbourhoods, public spaces, and social connection. Disabled people exist inside these systems every day, just as non-disabled people do. When those systems fail, harm becomes possible. This is the basic insight that justifies treating safeguarding as an ecology rather than a checklist.

Adding another two levels to the existing three levels used in disability safeguarding builds on existing systems and initiatives, such as Australia's disability strategy. The five levels (new proposed levels annotated in green) are:

1. **Foundational Safeguards (Environment and Culture)**, including accessible housing, transport, public space, inclusive attitudes, and an absence of ableism.
2. **Developmental Safeguards (Capacity Building)**, including skills, knowledge, self-advocacy, relationships, and citizenship.
3. **Preventative Safeguards (Standards and Oversight)**, including provider regulation, worker screening, restrictive practice authorisation, and incident reporting.

4. **Corrective Safeguards (Response and Justice)**, including complaints, investigation, enforcement, criminal prosecution, civil remedies, victims of crime compensation, and coronial review.
5. **Restorative and Transformational Safeguards (Healing and Systems Change)**, including trauma-informed support, restorative processes, and system reform after failure.

Underlying these levels is the concept of **Citizen Capital**, comprising Personal Capital (self-esteem, skills, health, resilience), Knowledge Capital (information, rights literacy), Social Capital (relationships, supporters, community), Material Capital (income, housing, technology, transport), and a fifth capital introduced in the Safeguarding White Paper: **Environmental and Structural Capital** (accessible buildings, inclusive systems, low-ableism culture, coordinated public services). People with disability typically have less of each form of capital because of lifelong exclusion. Justice reform that ignores capital deficits will not produce justice outcomes.

13A.3 What Could Have Saved Ann-Marie Smith, and What This Means for WA Justice

Ann-Marie Smith, a 54-year-old NDIS participant with cerebral palsy, died in April 2020 in Adelaide from septic shock, organ failure, and malnourishment caused by profound neglect in her own home. Her sole support worker eventually pleaded guilty to manslaughter. The NDIS Quality and Safeguards Commission investigated only after her death. The provider (Integrity Care SA) was fined and barred from the scheme. The criminal justice system delivered a sentence. None of these corrective measures saved her life.

Looking back at her death, it is not difficult to imagine what safeguards might have saved her, and the same analysis applies, with appropriate translation, to the deaths and serious harms documented in the coronial inquests and CIC matters considered elsewhere in this submission. Friends matter, but friends

require houses that are accessible. School friends are not always retained from special schools, because those friends are themselves struggling within failing systems. Safeguards require footpaths without steps and transport that works. They require community places that people can actually reach and systems that disabled people can actually use. They require people who are not ableist and who have the time and patience to listen past a cerebral palsy accent, or different ways of speaking or thinking. They require police, but not police who depend on the victim's abuser to transport the victim to make a complaint. They require planning meetings where the person themselves is present, not an abusive third party speaking on their behalf. Human connection is one of the most powerful safeguards there is, and it is routinely removed from the system.

These preconditions for safety are foundational and attitudinal in the Cheeseboard sense. They are the poorly defined other things that governments now argue about funding, pushing responsibility back and forth between the Commonwealth, the States, and the Territories. They are also the conditions whose absence brings disabled people into the WA justice system: as victims of crimes that better systems would have prevented, as accused whose disability-related behaviour was untreated and unsupported, as forensic patients whose community supervision will fail without supports, and as deceased persons whose deaths in custody or in NDIS-funded accommodation become the subject of coronial findings.

13A.4 Implications for the LRCWA Project 115 Terms of Reference

The LRCWA Terms of Reference focus on access to justice. The Safeguarding White Paper makes clear that access to justice cannot be achieved by reforming only Corrective safeguards (the courts, the police, the regulators), because:

- **Foundational and Attitudinal safeguards** determine whether disabled people are visible to the systems that might intervene before harm escalates to a criminal or coronial matter. The deaths considered in Sections 5 and 14 of this submission, and the institutional placements considered in Sections 6 and 8, are characterised by failures at the

Foundational level, including inaccessible housing, isolation, and ableism in police and clinical responses, that no amount of post-incident enforcement can repair.

- **Developmental safeguards** are routinely loaded onto the disabled person, demanding self-advocacy, rights literacy, and resilience from those with the least Personal, Knowledge, Social, and Material capital. The intermediary scheme proposed in Recommendation A3, the supported decision-making reforms recommended in Group E, and the SECCA and People First WA referral pathways proposed in Recommendation E6 are Developmental safeguards delivered in context, not in isolation.
- **Preventative safeguards** in the WA system are weakened by the absence of NDIS Quality and Safeguards Commission visibility into poor practice by providers, reductions in choice and control and nonexistent informal supports, by the disconnection between restrictive practice authorisation in NDIS rules and the WA guardianship system (*MS* [2020] WASAT 146; *T* [2024] WASAT 77; Section 8.7B), and by the OICS mandate gap recognised in Recommendation D7.
- **Corrective safeguards** in WA are the focus of Project 115 and are documented throughout this submission as inadequate for autistic, intellectually disabled, and mentally ill victims, witnesses, and accused. Strengthening corrective safeguards is necessary but not sufficient.
- **Restorative and Transformational safeguards** are largely absent from the WA system. The Commonwealth Disability Royal Commission delivered systemic recommendations, but their WA implementation remains partial. Coronial recommendations are not systematically put into effect or reviewed. The Restorative layer is also where Aboriginal-led, culturally safe healing must sit, addressing the compounded harms identified in Section 11.

13A.5 The Justice System as a Safeguarding Failure Mode

A recurring pattern across this submission is that the WA justice system is acting as the last and most damaging safeguarding layer for many disabled people, because every preceding layer failed.

- Disabled victims of crime end up in the District Court facing CIC time-limit barriers (*Re SR* [2025] WADC 37; Section 13.2A) because the psychological injury caused by the original crime is the same injury that stopped timely engagement with the legal system, and because no Foundational safeguard intercepted them.
- Autistic and intellectually disabled accused end up in the Magistrates Court and District Court under the CLMIA (*PYM*, *NG*, *PRF*, *KWLD*, *QMT*, *TJD*; Section 4) because the community supervision infrastructure the Act assumes does not exist (Recommendation I7), and because no Developmental safeguard was in place when their offending behaviour was emerging.
- Non-speaking autistic and intellectually disabled people are subject to substitute decision-making orders (the GG line; Section 8.1B) and, in two cases this year, applications for involuntary sterilisation (*AB* [2026] WASAT 31; *JC* [2026] WASAT 13; Section 8.7A) because the supported decision-making, communication assessment, and sex education referral pathways are not embedded as Foundational and Developmental safeguards (Recommendations A7, E6).
- Deceased disabled people become subjects of coronial inquiry (Section 5) because the Foundational and Preventative layers, including accessible housing, NDIS Justice Liaison capacity, and disability-informed police crisis response, were not in place.

Project 115 should not treat justice reform as an isolated corrective intervention. It should treat it as one slice of a structural safeguarding system that requires

investment in housing, transport, employment, inclusive information, anti-ableism culture, and human connection as preconditions for access to justice.

13A.6 Recommendations Arising from Section 13A

Recommendation M1: The WA Government should adopt a structural safeguarding framework as the conceptual basis for whole-of-government implementation of the Disability Royal Commission findings and the access to justice recommendations in this submission. Available frameworks that could be adapted include the Cheeseboard Model described above, but the choice of framework is for Government to make in consultation with disability-led organisations.

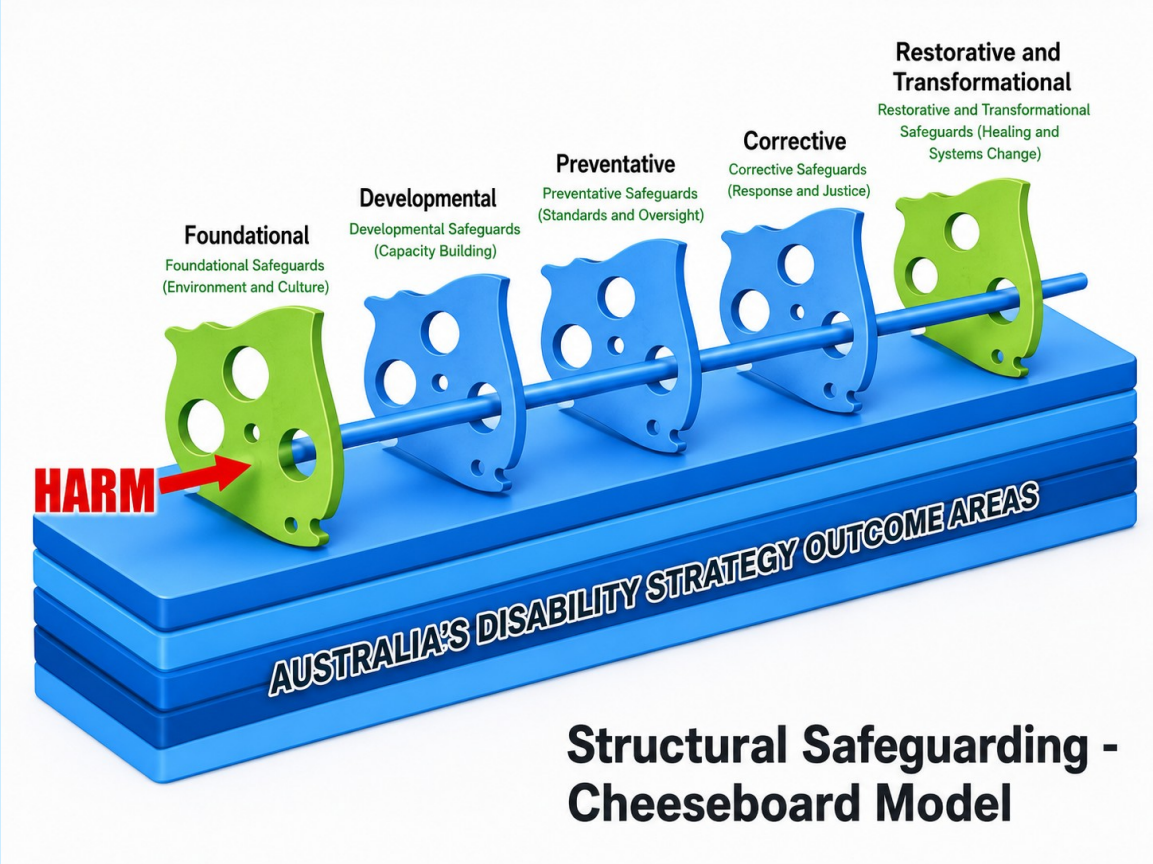
Recommendation M2: All access to justice reforms arising from Project 115 should be sequenced and resourced alongside foundational safeguards. This means accessible housing, transport, inclusive information, and anti-ableism workforce reform. Justice reform cannot succeed where the foundations are missing.

Recommendation M3: The WA Government should commission an audit of safeguarding gaps for disabled people across the criminal, civil, and coronial interface, with particular attention to Aboriginal disabled people, autistic mothers, young people at Banksia Hill, non-verbal and AAC-using people, and people in NDIS-funded residential accommodation.

Recommendation M4: The WA Government should work with the Commonwealth, the NDIS Quality and Safeguards Commission, and disability representative organisations so that whatever structural safeguarding framework WA adopts explicitly includes the justice interface and addresses the patterns documented across Sections 4, 5, 6, 7, 8, 11, 12, 13, and 14 of this submission.

Recommendation M5: The WA Government should treat the foundational and attitudinal layers of safeguarding as preconditions for access to justice, and use this as the basis for cross-portfolio funding decisions, rather than treating these

layers as contested matters that fall between Commonwealth and State responsibility.



Section 14: The Inspector of Custodial Services and Accountability Mechanisms

14.1 The OICS 2024 Report: Key Findings

The OICS report *People in Custody with an Intellectual Disability*, published 23 August 2024 (OICS, 2024a), is the most recent comprehensive examination of disability in WA's custodial system. The report's overall conclusion was blunt:

"Not all people with intellectual disabilities who enter custody in Western Australia are identified or adequately catered for or supported. While improvements to identification processes have occurred, the number of people identified as having an intellectual disability remains low compared to research estimates." (OICS, 2024a)

Its key findings for this submission are:

Behaviour management. Behaviour management policies in WA prisons and youth detention do not require consideration of known or suspected disability or impairment. Autistic people are subjected to punitive responses, including segregation, use of force, and loss of privileges, for disability-related behaviours. These punitive responses are not just ineffective. For autistic people, they are actively harmful, producing escalating distress, trauma, and self-harm (OICS, 2024).

Use of force. Force has been used disproportionately against people in custody with intellectual disabilities. The OICS found this pattern in both adult and youth facilities. For autistic people, restraint in response to distress-driven behaviour creates heightened physiological risk, as the Van Malssen case (Section 5) shows even outside custodial settings.

Disability training. Prison officers and youth custodial officers receive no ongoing disability training. Initial training is minimal. There is no requirement for mandatory autism awareness training at any level of the custodial system.

Disability Coordination Team. The Disability Coordination Team managing disability services across the WA custodial estate has only 2.5 FTE staff for a population of over 7,000 (OICS, 2024a). This is not a resourcing model. It is the structural absence of disability support.

Accommodation. Few dedicated living areas exist for people with complex disability needs, and capacity is very limited. People with intellectual disability are housed in general accommodation where their disability-related behaviours create risks for themselves and others.

Identification rates. Between 2018 and October 2023, “only six per cent of the adult and youth custodial populations were identified as having an intellectual disability or cognitive impairment, which is significantly lower than research estimates” (OICS, 2024a; OICS, 2024b). Research estimates put the figure at three to four times that level (Section 3.1).

Identification is over-reliant on self-reporting. OICS found that “there are almost certainly more persons in custody with an intellectual disability than has been identified” (OICS, 2024b). A functional impairment screening tool launched in 2024 has helped identify more people, but inadequate information-sharing, including delays in transferring youth detention records, compounds the problem. In its Revised Code of Inspection Standards for Adult Custodial Services, OICS specifies that “Prisoners are systematically screened for various types of disability on entry to prison and processes are initiated to address their needs,” with screening to occur “within the first 72 hours of reception to prison” and tools that do not rely solely on prisoner self-reporting (OICS, 2022a). In practice, OICS found prisons used a generic screening tool (FIST) that over-relied on self-reporting.

NDIS access barriers. OICS found “barriers preventing both adults and young people from receiving National Disability Insurance Scheme (NDIS) supports while in custody,” no tailored criminogenic treatment programmes, and poor governance around the use of prisoner carers (OICS, 2024b).

OICS Recommendations. The 2024 report made three recommendations: (1) “Establish an overarching model to guide the custodial journey for people living with a disability”; (2) “The Government should commit additional resources for the expansion of the Disability Coordination Team within the Department of Justice”; and (3) “Develop a policy framework for identifying disabilities in young people who enter custody” (OICS, 2024a).

Department of Justice response. On 26 August 2024, the Department of Justice acknowledged the report. Director General Kylie Maj said the Department’s functional impairment screening tool and a new online disability training programme for staff working with adults in custodial and community corrections settings were “part of the Department’s commitment to protecting the human rights of people with mental impairment in the justice system” (Government of Western Australia, 2024). A culturally appropriate pilot screening programme for young people was reported as underway in collaboration with the Youth Detention State Forensic Mental Health Service. As at June 2026, no overarching disability model has been established, the Disability Coordination Team has not been expanded in the 2026-27 WA Budget, and the youth identification policy framework remains at pilot stage.

14.1A The Autism-Specific Gap in OICS Framing

A recurring limitation across the OICS body of work, including the 2024 intellectual disability report, is the framing of “disability in custody” primarily as intellectual disability and cognitive impairment. OICS adopts the CRPD’s broad definition (OICS, 2022a) but in practice the data, the screening tool, the Disability Coordination Team structure and the Department of Justice response have all centred ID, FASD and acquired brain injury. Autism is mentioned incidentally rather than as a primary cohort.

This matters because autistic people without intellectual disability are the largest sub-group of autistic adults (around 56 per cent nationally) and are consistently the cohort least visible to custodial disability identification processes. They are

not screened in by a functional impairment instrument calibrated to ID, they are not housed in the dedicated units at Casuarina or Acacia (which are oriented to ID and complex behaviour), and they fall outside the Department-of-Justice-administered cognitive disability pathways. Yet they carry the same elevated risk of suicide, distress-driven behaviour, victimisation, communication breakdown with custodial staff, and lockdown-induced sensory harm.

Project 115's autism lens therefore requires that the D-series recommendations in this submission be read as autism-inclusive, not ID-exclusive. Specifically:

- The overarching disability model called for at D8 must explicitly include autism without intellectual disability, FASD, ADHD, and co-occurring presentations, not only ID.
- The screening tool referred to at D6 must be calibrated to detect autism without ID (including in adults who have never been formally diagnosed), not only intellectual or functional impairment.
- The training programme referred to at D3 must be autism-specific and not subsumed within generic "disability awareness" content.
- The youth identification policy framework at D9 must screen for the full range of neurodevelopmental conditions identified in Bower et al. (2018) at Banksia Hill, including 89 per cent severe neurodevelopmental impairment and 36 per cent FASD, of which autism is a significant component.

The Department of Justice's own Disability Access and Inclusion Plan (DAIP), made under the *Disability Services Act 1993* (WA), already binds the Department to ensuring that its services, information, facilities, and employment are accessible to people with disability, including autistic people. The OICS findings, the Show Cause Notice and the cases catalogued in this submission show that the DAIP is not operating as a meaningful access framework inside custodial facilities. Project 115 should treat the DAIP regime as the existing statutory hook through which an autism-inclusive overarching model can be made enforceable, rather than building a parallel framework.

14.1B The OICS Crisis Care Report (January 2025)

In February 2025 OICS published *People in Custody Requiring Crisis Care* (OICS, 2025), reviewing the Crisis Care Units (CCUs) used to manage prisoners at risk of self-harm or suicide. The Department's own definition of "vulnerability" for these prisoners expressly includes "mental illness, intellectual disability or cognitive impairment, cultural or spiritual issues, sexual orientation or gender diversity" (OICS, 2025), placing CCU operation squarely within Project 115's remit.

Key findings (OICS, 2025):

Scale. Around 8 per cent (633) of the adult prison population had a diagnosed, or were awaiting assessment for, a psychiatric condition.

Function. Placements in crisis care were "mainly based on suicide prevention rather than therapeutic support," and the experience of prisoners in crisis care "was one of isolation and loneliness and likely exacerbated, rather than improved, mental health outcomes."

Infrastructure. Crisis care units were described as "cold sterile facilities" that were "not compatible with community standards."

Long stays. "We identified 18 prisoners who spent more than 100 days in the CCU. Three prisoners spent more than a year in the CCU." These are not crisis placements. They are de facto indefinite segregation of distressed people with mental illness, intellectual disability, or cognitive impairment, in conditions OICS itself rates as below community standards.

Staffing. Less than one full-time psychiatrist (0.8 FTE) for the whole estate excluding Acacia, and only two Aboriginal mental health workers across the custodial estate, both at Casuarina Prison.

For autistic people in distress, the combination of sensory austerity (cold, sterile, isolating), prolonged duration, and almost complete absence of psychiatric and culturally appropriate mental health staffing is the worst possible response. The

CCU regime as currently operated does not meet the threshold of humane treatment under CRPD Articles 15 and 16, and is structurally similar to the conditions the UN Special Rapporteur on Torture has described as prohibited.

14.1C The OICS Show Cause Notice (9 June 2026)

On 9 June 2026, the Inspector of Custodial Services, Eamon Ryan, issued a Show Cause Notice in respect of Hakea Prison, Casuarina Prison and Melaleuca Women's Prison (OICS, 2026). This is only the fourth Show Cause Notice issued in the history of the Inspector's powers. It is the most serious form of formal escalation available to the Inspector short of the Inspector's reporting obligations to Parliament.

The central finding is that prisoners in those three facilities are being held in conditions that are "cruel, inhuman or degrading" (OICS, 2026). The Notice records that "nearly two years after a Show Cause Notice was first issued in respect of Hakea Prison, conditions have not materially improved" and "the same risk factors are now evident at Casuarina Prison and Melaleuca Women's Prison. What began as a facility-specific failure has escalated into a system-wide" problem (OICS, 2026).

The Inspector found that the three prisons "are operating under extreme and sustained pressure, with population growth (driven by unprecedented rises in remand numbers), chronic staffing shortages and capacity constraints fundamentally undermining prisoner and staff wellbeing. Overcrowding has become routine, lockdowns increasingly normalised, and time out of cell, access to healthcare, family" contact and rehabilitative activity significantly reduced (OICS, 2026). These conditions "are associated with rising self-harm, increased use of force and persistent low-level violence, indicating environments that are increasingly volatile and psychologically harmful" (OICS, 2026).

The context for this submission is unambiguous. The prisoners most vulnerable to overcrowding, lockdown, reduced healthcare access, and use of force are the

same prisoners identified in OICS (2024a) and OICS (2025): autistic people, people with intellectual disability, people with FASD, people with co-occurring mental illness, and Aboriginal people, who are over-represented at every stage. The 37 per cent rise in the prison population since the beginning of 2023, with no matching expansion of cells or staff, has produced a system in which the disability-specific failures OICS first identified in 2022 and again in 2024 are now compounded by structural collapse of the broader custodial environment.

The Inspector's single recommendation requires the Department of Justice, within six months of tabling, to "develop, approve, and publicly release a comprehensive, costed reform implementation" plan covering short, medium, and long-term strategies, with a clear timeline (OICS, 2026). The Inspector characterised existing initiatives as "piecemeal" and called for "whole of system strategic reform" (ABC News, 2026).

The Show Cause Notice supports every recommendation in the D, G, M and O series of this submission. It also confirms that the disability-related reforms recommended in Section 14 cannot be implemented as standalone measures within a custodial estate that has been formally declared to be operating in breach of CRPD Articles 15 and 16.

14.1D The OICS 2022 Statement to the Disability Royal Commission and the 2021 Hakea Inspection

The OICS body of work on disability in custody did not start in 2024. Two earlier OICS documents establish the long-standing nature of the problems identified in the 2024 and 2025 reports, and the long-standing nature of the recommendations that government has not implemented.

OICS 2022 Statement of Information to the Disability Royal Commission. In its 31 August 2022 statement to the Disability Royal Commission (OICS, 2022a), OICS set out a series of findings and standards that anticipate almost every issue raised in the 2024 and 2025 reports. The statement is the foundational

OICS articulation of the problem and is treated by SWAN as the baseline against which subsequent reforms should be measured.

Key content of the 2022 statement (OICS, 2022a):

- **Screening standard.** OICS's Revised Code of Inspection Standards for Adult Custodial Services specifies that "prisoners are systematically screened for various types of disability on entry to prison and processes are initiated to address their needs", that screening must occur "within the first 72 hours of reception to prison", and that the screening tool must not rely solely on prisoner self-reporting. This is the express OICS standard that recommendation D6 entrenches in statute.
- **Youth detention.** OICS recorded the long-standing finding that cognitive impairment identification in WA youth detention is "inadequate". This is the foundation for recommendation D9 and links directly to the youth identification policy framework that OICS again recommended in 2024.
- **Telethon Kids data.** The 2022 statement incorporates the Bower et al. (2018) findings from the Telethon Kids Institute Banksia Hill study: 36 per cent of young people at Banksia Hill have FASD, and 89 per cent have at least one severe neurodevelopmental impairment. OICS used this data in 2022 to ground its position that the WA youth custodial system is operating without an adequate disability identification framework. The data has not become less relevant in the intervening four years.
- **Physical accessibility.** OICS recorded that Banksia Hill is poorly physically accessible for young people with disability, including those with mobility, sensory, and communication impairments. The Department of Justice has not comprehensively remediated the physical environment.
- **Definition of disability.** OICS adopts the CRPD's broad definition of disability, including autism, intellectual disability, ABI, FASD, ADHD, mental illness, and physical and sensory impairments. SWAN's D-series recommendations adopt the same definition.

The central significance of the 2022 statement is timing. By August 2022, OICS had already told government, in a formal statement to a Royal Commission, what the 2024 and 2025 reports went on to repeat. The standards it sets out are not aspirational; they are OICS's own inspection standards. Recommendation D1, D3, D6, D8, D9, and D10 should be read as giving statutory effect to standards that OICS itself committed to publicly in 2022.

OICS 2021 Hakea Prison Inspection. In its 2021 inspection of Hakea Prison, OICS recorded screening gaps for prisoners with disability and recommended physical remediation of cells to make them accessible to prisoners with disability. The recommendation to renovate cells was not supported by the Department of Justice. As at June 2026, that 2021 finding remains operative: the conditions at Hakea form part of the basis for the 9 June 2026 Show Cause Notice (OICS, 2026; Section 14.1C). The five-year arc from the 2021 Hakea findings to the 2026 Show Cause Notice illustrates the cost of not implementing OICS recommendations when they are first made.

14.1E Mapping the OICS Recommendations to the SWAN Recommendations

The SWAN recommendations are designed to give effect to, and where necessary strengthen, the recommendations OICS has made across its 2022, 2024, and 2025 reports. The mapping is as follows.

OICS recommendation / standard	SWAN recommendation
Establish an overarching model to guide the custodial journey for people living with disability (OICS, 2024a, Rec 1)	D8 (autism-inclusive overarching disability-in- custody model)
Government to commit additional resources for the expansion of the Disability Coordination Team (OICS, 2024a, Rec 2)	D5 (1 Disability Coordination Officer per 200 people in custody minimum)
Develop a policy framework for identifying disabilities in young people who enter custody (OICS, 2024a, Rec 3)	D9 (youth disability framework, building on the Forensic Mental Health Service pilot)

OICS recommendation / standard	SWAN recommendation
Express disability mandate for the Inspector (OICS, 2022a position; echoed in DRC Rec 8.8)	D1 (statutory disability mandate in the *Inspector of Custodial Services Act 2003* (WA))
Screening within 72 hours of reception, not self-report (OICS, 2022a inspection standard)	D6 (statutory entrenchment of validated, non-self-report screening at every entry point, with downstream triggers)
Behaviour management policies must consider disability (OICS, 2024a)	D4 (require consideration of disability before any punitive response in custody)
Mandatory ongoing disability training (OICS, 2022a, 2024a)	D3 (statutorily mandatory, recurrent, autism-specific training, with independent curriculum review)
Crisis Care Unit redesign: therapeutic, not isolation-based (OICS, 2025)	D10 (CCU redesign on therapeutic, disability- informed basis, with biennial OICS review)
Solitary confinement of children with disability prohibited (DRC Rec 8.3; OICS, 2024d Banksia security review)	G5 (extended: prohibit solitary confinement under Mandela Rules 43-45 for any person with disability, child or adult)
Implement outstanding 2024 youth custody and Banksia Hill security review recommendations (OICS, 2024c, 2024d)	G6 (implement, re-table, and publish costed plan against the 2024 OICS youth reviews)
Address NDIS access barriers in custody (OICS, 2024a, 2024b)	I1, I2, I4 (joint planning, NDIS Justice Liaison Officers, 90-day pre-release transition supports)
Renovate cells for accessibility (OICS 2021 Hakea inspection, not supported)	D8, M2 (overarching model; sequence reforms alongside foundational supports including accessible custodial infrastructure)

The pattern that emerges is consistent. OICS has identified the problems and proposed the framework. The Department of Justice has not implemented most of what OICS has recommended, and the few elements implemented (the August 2024 functional impairment screening tool, the online disability training module) are administratively, not statutorily, mandated. SWAN's D-series recommendations convert OICS's standards into statutory obligations, and add the autism-specific scope that OICS's intellectual-disability framing does not fully capture (Section 14.1A).

14.2 DRC Recommendation 8.8 and the Inspector of Custodial Services Act 2003 (WA)

DRC Recommendation 8.8 recommended that the Western Australian Government consider amending the Inspector of Custodial Services Act 2003 (WA) to give the Inspector an express power to report on and make recommendations about the disability-related treatment of people in youth detention and adult correctional facilities. WA has accepted this recommendation in principle.

The Inspector currently has broad powers to inspect and report on custodial facilities, but does not have express powers specifically about disability. An express disability monitoring power would: (a) allow the OICS to develop disability-specific inspection standards and methodology; (b) require facilities to produce disability-specific data; and (c) create a formal reporting obligation that would strengthen accountability for disability outcomes in custody.

14.3 OPCAT and the Community Visitor Scheme Gap

The Optional Protocol to the Convention Against Torture (OPCAT) requires states to set up independent national preventive mechanisms (NPMs) to monitor all places where people are deprived of liberty, including prisons, youth detention, and mental health facilities. Australia ratified OPCAT in December 2017.

Community visitor schemes (CVS) are a key component of OPCAT implementation. CVS allow community visitors, independent of the facility, to enter places of detention, observe conditions, speak privately with detainees, and report on their findings. They provide the eyes and ears of civil society in custodial settings.

Western Australia does not currently have a CVS for people with disability in custodial settings. DRC Recommendation 11.12 required all states and territories to urgently set up CVS, with national consistency of scope, powers, standards, and data collection. DRC Recommendation 11.13 required the Commonwealth to amend the NDIS Act to formally recognise CVS as a safeguard.

In NSW and Victoria, CVS function very differently, as does the scheme in South Australia. The NSW scheme is a paid role, but there are only 35 community visitors across the state and the role is traditionally poorly paid. They report to the Ageing and Disability Commissioner and also visit OOHC (Out Of Home Care) houses. In Victoria, it is a voluntary role.

WA's position on Recommendation 11.12 is "subject to further consideration." The absence of a CVS for people with disability in WA custody means the disability-specific safeguarding function that CVS are designed to provide is missing. Autistic people in WA prisons and at Banksia Hill are almost entirely dependent on the OICS for external oversight of their conditions.

14.4 Recommendations Arising from Section 14

Recommendation D1: Amend the Inspector of Custodial Services Act 2003 (WA) to give the Inspector an express power to report on and make recommendations about the disability-related treatment of people in youth detention and adult correctional facilities, putting DRC Recommendation 8.8 into effect.

Recommendation D2: Set up a community visitor scheme in Western Australia for places of detention, consistent with OPCAT and DRC Recommendation 11.12.

Recommendation D3: Mandate ongoing disability training, including autism-specific training, for all custodial officers in WA, at induction and annually thereafter.

Recommendation D4: Amend WA custodial behaviour management policies to require consideration of known or suspected disability or impairment before any punitive response is applied.

Recommendation D5: Resource the WA Disability Coordination Team adequately for the custodial population, with a minimum ratio of one Disability Coordination Officer per 200 people in custody.

Recommendation D6: Screen for disability at every entry point to custody, using a validated tool that does not rely on self-report (DRC Rec 8.15).

Recommendation D7: Extend the Inspector of Custodial Services' mandate (or set up another entity) and resource to cover all NDIS-funded residential accommodation in WA where residents may be subject to restrictive practices. This includes SIL houses, OOHC, forensic step-down accommodation, and CLMIA community supervision placements. The Inspector should be able to enter, inspect, report, and recommend, consistent with OPCAT obligations and CRPD Article 16.

Section 14A: Neurodiversity Standards Across WA Institutions

14A.1 The Problem

A pattern runs through this whole submission. Courts, prisons, tribunals, NDIS services, and crisis response systems are designed for neurotypical people. Autistic people, intellectually disabled people, and people with ADHD, FASD, or acquired brain injury are then expected to fit themselves into environments that are predictably hostile to their sensory, communication, predictability, and regulation needs. When they cannot, the system treats that as their fault.

A legislative reform agenda that fixes only the rules, but not the environments, will not work. A right to a communication partner is hollow if the courtroom is sensorily overwhelming. A supported decision-making framework is hollow if the

tribunal speaks only in legal English. A “fit with support measures” finding under CLMIA section 32 is hollow if no one knows how to design those support measures.

14A.2 What WA Could Do

WA could adopt enforceable neurodiversity standards, as per SWAN’s Include Me project, that apply to public institutions and to NDIS-funded services delivered in WA. These standards would cover, at a minimum:

- **Sensory environment:** low-stimulation rooms in courts, tribunals, custody reception, and emergency departments; control of fluorescent lighting and intercom noise; access to sensory regulation items where security allows.
- **Communication:** plain English as the default; Easy Read versions of charge sheets, bail conditions, tribunal orders, NDIS plans, behaviour support plans, and prison rules; AAC compatibility for front-line digital systems; communication-needs screening at every entry point.
- **Predictability:** advance notice of process steps and changes; named contact points where practical; written confirmation of verbal decisions; visual schedules for custody routines, court appearances, and tribunal hearings; pre-visit familiarisation for courts and custody.
- **Workforce:** mandatory training on autism, intellectual disability, ADHD, FASD, ABI, complex trauma, minority stress, and LGBTIQA+ identity for front-line staff in all in-scope institutions, at induction and annually.
- **Co-design:** paid, ongoing co-design with disability-led organisations for service design, policy, training, and evaluation.
- **Justice-specific applications:** sensory-adapted hearing rooms, intermediary access, plain English orders, pre-hearing familiarisation, disability-informed police crisis response, segregation alternatives for autistic prisoners in meltdown or shutdown, and communication accommodation in the CLMIA, coronial, MHRT, and SAT processes.

A framework along these lines exists already in SWAN's Include Me initiative, and other disability-led organisations in WA are working on related neurodiversity standards. The most useful thing the LRCWA can do here is recommend that the WA Government partner with that existing disability-led work, rather than design a parallel scheme from scratch.

14A.3 Why Voluntary Adoption Will Not Work

Voluntary adoption of disability standards has not produced change in WA. The Banksia Hill litigation, the OICS reports, the Disability Royal Commission findings, and the coronial findings examined throughout this submission all demonstrate that. A workable scheme requires legislated standards, independent audit, public reporting, and funding consequences for non-compliance.

14A.4 Recommendations Arising from Section 14A

Recommendation P1: The WA Government should partner with disability-led organisations already running justice-specific neurodiversity standards work in WA, including SWAN's Include Me initiative and equivalent work by People With Disabilities WA, People First WA, FPDN-aligned WA Aboriginal disability organisations, and TransFolk of WA. The aim is enforceable, audited, and publicly reported neurodiversity standards for WA public institutions and NDIS-funded services delivered in WA, with explicit application to justice settings (courts, tribunals, police, custody, CLMIA pathways, coronial process), with paid co-design, and with compliance tied to WA Government funding.

Section 15: Mapping to the Terms of Reference

The following table maps SWAN's submission to the Terms of Reference of LRCWA Project 115.

ToR Element	Sections Addressed
(a) Broad definition of disability, including neurological, learning, and psychiatric impairments	Sections 1, 2, 3
(b)(i) Accused persons in criminal proceedings	Sections 3, 4, 5, 6, 10
(b)(ii) Convicted persons and persons subject to supervision orders	Sections 6, 12, 14
(b)(iii) Victims of crime and family of victims	Sections 7, 13
(b)(iv) Witnesses in criminal and civil proceedings	Section 7
(b)(v) Parties to civil proceedings	Sections 8, 9, 13
(b)(vi) Parties to family law proceedings	Section 9
(b)(vii) Parties to guardianship and administration proceedings	Section 8
(b)(viii) Parties to other tribunal proceedings	Sections 8, 13
(c) Context of prior reports including the DRC, ALRC, Justice Transition Project, State Disability Strategy, DAIP, Project 114	All sections; especially Sections 2, 3, 4, 8, 10, 12
(d) Communication partners, interpreters, technology, and other supports	Sections 4, 7, 14
(e) CRPD obligations, including dignity, autonomy, legal capacity, and access to justice	Sections 2, 4, 7, 8, 11

ToR Element	Sections Addressed
(f) Relevant state and Commonwealth reforms, including NDIS	Sections 4, 9, 10, 12, 14
(g) The Criminal Law (Mental Impairment) Act 2023 (WA)	Section 4
(h) Other relevant matters, including Aboriginal over-representation, deaths in custody, regional access gaps	Sections 3, 5, 11, 14

Section 16: Recommendations

These recommendations are grouped by theme. Each one is meant to be read alongside the evidence in the sections above. The language is deliberately plain, because the people most affected need to be able to read and use this submission too.

This section sets out a short-form summary of each recommendation. The full text of every recommendation, with its supporting rationale and the evidence, cases, and authorities relied on, is set out in the **Appendix: Recommendations in Full**.

A. Communication and participation

A1. Amend the *Criminal Law (Mental Impairment) Act 2023* (WA) so that autism on its own is included in the section 9 definition of mental impairment.

A2. Legislate a right to a communication partner or intermediary for any autistic or neurodivergent person in any WA legal proceeding, regardless of role, from first police contact onwards.

A3. Set up a legislated, ACT-style intermediary scheme covering all participants in all proceedings, available 24/7, with formal communication assessment.

A4. Make autism and communication training mandatory, at induction and annually, for all judicial, prosecution, defence, registry, police, transit security, and custodial staff.

A5. Require courts to actively consider a section 32 “fit with support measures” finding before making a finding of unfitness, and update sentencing guidance so autism is expressly addressed in mitigation.

A6. Screen accused people in the Magistrates Court for cognitive impairment and communication needs before plea, using a validated, non-self-report tool (implements DRC Recommendation 8.15).

A7. Amend the *Mental Health Act 2014* (WA) and the *Guardianship and Administration Act 1990* (WA) so no guardianship, administration, ECT, or community treatment order can be made for a non-verbal, minimally verbal, or AAC-using person without an independent communication assessment.

B. CLMIA reforms

B1. Extend the Communication Partner Program to victims and witnesses in all WA courts.

B2. Review the section 27 Criminal Code "complete deprivation" threshold, considering a "substantial impairment" standard for comorbid ASD and psychosis.

B3. Use assessors with specific autism expertise for section 32 "fit with support measures" assessments.

B4. Close the residual indefinite-detention pathways under the CLMIA, consistent with CRPD Article 14: narrow or repeal extended custody orders, remove the life-default limiting term for murder and manslaughter, and phase out custody for unfitness alone in favour of funded community supervision.

C. Sentencing and supervision

C1. Add explicit guidance to the *Sentencing Act 1995* (WA) on how autism and neurodevelopmental disability bear on culpability, deterrence, custodial hardship, rehabilitation, and the feasibility of supervision.

C2. Develop disability-informed assessment frameworks for sexual offence matters involving autistic defendants.

C3. Require disability assessment of whether an autistic person can realistically comply with proposed CLMIA and HRSO supervision conditions before they are finalised.

C4. Legislate joint planning between CLMIA / HRSO supervision orders and NDIS planning (links to I1).

D. Custody conditions and oversight

D1. Amend the *Inspector of Custodial Services Act 2003* (WA) to insert an express statutory disability mandate (implements DRC Recommendation 8.8).

D2. Establish a community visitor scheme for places of detention in WA, consistent with OPCAT and DRC Recommendation 11.12.

D3. Make disability training, including autism-specific content, mandatory and recurrent for all custodial, court security, and transport staff, co-designed with disabled and Aboriginal disability-led organisations, with statutory minimum hours and annual reporting.

D4. Amend custodial behaviour management policies so known or suspected disability must be considered before any punitive response.

D5. Properly resource the Disability Coordination Team, with at least one officer per 200 people in custody.

D6. Entrench in legislation universal disability screening on entry to adult and youth custody using a validated, non-self-report tool, with defined downstream triggers and annual disaggregated reporting (implements DRC Recommendation 8.15).

D7. Extend the Inspector's mandate and resourcing to all NDIS-funded residential accommodation in WA where residents may be subject to restrictive practices.

D8. Adopt and fund an overarching WA disability-in-custody model across adult and youth custody, with published performance measures and independent OICS oversight.

D9. Establish a youth disability framework for Banksia Hill and any other youth facility, with mandatory screening on entry, individualised support, and a complete prohibition on solitary confinement (see G5), co-designed with First Nations disability-led organisations and families.

D10. Redesign the Casuarina Crisis Care Unit and any equivalent unit on a therapeutic, trauma-informed, disability-informed basis, with a documented prohibition on its use as punishment and biennial independent OICS review.

D11. Require every justice setting, from courthouse to victim support unit, to have its own Disability Access and Inclusion Plan addressing local gaps and embedding best practice, including neurodiversity standards, in each regional department.

E. Guardianship and supported decision-making

E1. Urgently implement the LRCWA Project 114 supported decision-making recommendations and amend the *Guardianship and Administration Act 1990* (WA) to abolish substitute decision-making for adults and replace it with a supported decision-making framework (embeds DRC Recommendation 6.6).

E2. Develop provisions for how supported decision-making works at the criminal-civil interface, especially for forensic patients with both a CLMIA order and a guardianship order.

E3. Repeal the guardianship "gag laws" so represented persons can publicly tell their own stories (Project 114).

E4. Make the *Mental Health Act 2014* (WA) ECT regime (sections 409-415) accessible and independently reviewable, with communication support at the Tribunal.

E5. Create a simpler, non-adversarial pathway for families managing well to formalise their authority without full Tribunal guardianship proceedings.

E6. Amend the *Guardianship and Administration Act 1990* (WA) to expressly prohibit non-therapeutic sterilisation of any person with disability, with strict mandatory safeguards (SECCA referral, supported decision-making, exclusion of reversible alternatives, CRPD compliance statement) before any strictly therapeutic procedure can be authorised.

E7. Legislate mandatory consideration of NDIS restrictive practice authorisation in any guardianship proceeding involving a person subject to restrictive practices, with SAT to record Behaviour Support Plan and Authorisation status.

F. Family law and child protection

F1. Amend the *Children and Community Services Act 2004* (WA) to legislate procedural accommodations for parents with disability: communication support, plain-language documents, and extended timelines.

F2. Develop disability-informed and autism-adapted parenting capacity assessment frameworks, co-designed with autistic and disabled parents.

F3. Co-design culturally appropriate parenting capacity assessment principles for First Nations parents with disability (implements DRC Recommendation 9.1).

F4. Require child protection systems to assess the impact of NDIS funding changes on families with disability before making removal decisions.

G. Youth justice

G1. Raise the minimum age of criminal responsibility in WA to at least 14 (consistent with DRC Recommendation 8.22).

G2. Screen for disability at every entry point to the youth justice system, using a validated, non-self-report tool.

G3. Fund and implement a therapeutic, non-punitive, trauma-informed operating philosophy at Banksia Hill and any other youth facility.

G4. Fund dedicated therapeutic diversion pathways for young people with ASD, FASD, intellectual disability, and other neurodevelopmental conditions.

G5. Prohibit by statute the use of solitary confinement (defined per Mandela Rules 43-45) for any person with disability, child or adult, in any WA custodial or detention facility (extends DRC Recommendation 8.3 to its CRPD-compliant scope).

G6. Implement and publicly report against the outstanding 2024 OICS youth custody and Banksia Hill security reviews, re-table the withdrawn youth review, and require a costed implementation plan within six months.

H. Aboriginal autistic people

H1. Develop and implement a culturally validated disability screening tool, co-designed with FPDN and Aboriginal autistic people.

H2. Increase the NDIA First Nations workforce in WA, including Aboriginal disability workers in remote communities.

H3. Ensure CLMIA community supervision orders cannot be implemented where there is no culturally safe accommodation and support, and that this absence does not become a reason to keep someone in custody.

H4. Implement DRC Recommendation 8.16: increased resources for First Nations organisations providing culturally safe support in custody.

H5. Disaggregate disability data by Aboriginal and Torres Strait Islander identity at every stage of the WA criminal justice system.

H6. Conduct routine disability assessment in every WA death in custody investigation, with results disaggregated by Aboriginal identity.

I. NDIS interface

I1. Legislate joint CLMIA / HRSO and NDIS planning with a “no release without a funded plan” principle.

I2. Legislate NDIS Justice Liaison Officers at every WA custodial facility, adequately resourced.

I3. Advocate to the Commonwealth to protect autistic people’s NDIS access from the 2026 Bill’s permanence test, preserve plan continuity after custody, require individual review of Ministerial determinations, and ensure no one is removed before foundational supports are in place.

I4. Urgently implement DRC Recommendation 8.18: NDIA-funded transition supports from at least 90 days before release.

I5. Reject the 1:3 SIL ratio as a default for autistic people with complex needs or offending histories; require individual assessment.

I6. Resolve the APTOS boundary disputes about disability-related versus criminogenic supports (implements DRC Recommendation 8.17).

I7. Properly resource the NDIS-CLMIA community supervision interface, including a funded forensic disability support workforce, non-SIL transition accommodation, and an NDIS Quality and Safeguards Commission protocol for CLMIA participants.

J. Coronial and accountability

J1. Establish a multi-agency disability-justice working group to systematically review coronial findings involving people with disability and drive legislative and policy change.

J2. Encourage coroners to commission independent expert evidence on disability-related care and support, not only medical cause of death.

J3. Review any NDIS SIL refusal decision where the person subsequently dies in circumstances connected with their disability.

J4. Develop and implement a WA Police disability-informed crisis response protocol that does not default to force or restraint.

J5. Fund and expand the Mental Health Co-Response (a mental health clinician attending crisis call-outs with police) across regional and remote WA toward 24/7 coverage, with defined clinical pathways for people with co-occurring conditions so responders connect them to ongoing care rather than custody or an emergency department.

K. Civil and tribunal access

K1. Amend the *Criminal Injuries Compensation Act 2003* (WA) to expressly accommodate people with disability throughout the claims process.

K1A. Amend the CIC Act extension-of-time provisions so disability-related incapacity to engage with the legal system is given specific weight in the just test (responds to *Re SR* [2025] WADC 37).

K1B. Develop a CIC practice direction for systematic offer of support persons, communication assistance, and procedural accommodation to parties identifiable as having disability (responds to *Re SMB* [2025] WADC 24 and *Ex Parte ABC* [2025] WADC 17).

K1C. Establish a disability-accessible psychological injury pathway in the WA workers compensation system (responds to *Morgan* [2025] WADC 38 and *Lourey* [2025] WADC 19).

K1D. WA Government to formally oppose the workers compensation and motor vehicle accident scheme exclusion in the Commonwealth NDIS Amendment Bill 2026 and quantify the load it would impose on WA schemes and courts.

K2. Adopt a disability access framework in the State Administrative Tribunal consistent with CRPD Article 13.

K3. Extend legal aid and assistance for people with disability across all civil, family, guardianship, and child protection proceedings.

K4. Repeal section 5 of the *Juries Act 1957* (WA) and replace it with an accommodation-based framework consistent with CRPD Article 13 (builds on LRCWA Project 99).

K5. Legislate a WA disability data framework requiring collection and public reporting of disaggregated disability data across the criminal, civil, child protection, guardianship, and coronial systems (gives effect to CRPD Article 31).

L. Commonwealth advocacy on the 2026 NDIS Bill

L1. WA Government may consider formally advocating that the NDIS Amendment (Securing the NDIS for Future Generations) Bill 2026 not proceed in its current form, conditioned on foundational supports, individual review rights, protections for justice-involved participants, and demonstrated CRPD compliance.

M. Structural safeguarding

M1. Adapt a disability justice structural safeguarding model for WA so access to justice reforms sit alongside upstream safeguarding.

M2. Sequence and resource all Project 115 reforms alongside foundational supports: accessible housing, transport, inclusive information, and anti-ableism workforce reform.

M3. Commission an audit of safeguarding gaps across the criminal-civil-coronial interface, with particular attention to the most isolated cohorts.

M4. Move from oversight to elimination of restrictive practices in WA, with a legislated time-bound reduction and elimination plan, public reporting, independent oversight, and a statutory end date.

M5. Treat foundational and attitudinal safeguards as preconditions for access to justice and as the basis for cross-portfolio funding decisions.

M6. WA Government to formally advocate that Australia withdraw its interpretative declaration on CRPD Article 12, and meanwhile legislate as though it has already been withdrawn.

N. LGBTIQA+ autistic people

N1. WA Government to review *Commissioner's Operating Policy and Procedure 4.6 Trans, Gender Diverse and Intersex Prisoners* against the lived experience of LGBTIQA+ disabled prisoners, in consultation with TransFolk of WA, SWAN, PWdWA, DDWA and others.

N2. Amend WA deaths in custody data collection and coronial reporting to record neurodevelopmental disability status and LGBTIQA+ identity, with privacy protections.

N3. WA Department of Justice to publish annual data on the placement, search arrangements, single-cell access, healthcare access, and incident exposure of trans, gender diverse, and intersex prisoners, with disability disaggregation.

N4. Include LGBTIQA+ and disability community visitors with relevant lived experience in the community visitor scheme at D2.

N5. Include the autism, intellectual disability, mental health, and LGBTIQA+ intersection in the workforce training mandated under A4.

O. Suicide and the diagnostic gap in justice

O1. WA Department of Justice to implement a routine in-custody autism diagnostic assessment pathway where records contain notations of "possible autism", triggering Communication Partner Program referral, Verdins re-evaluation, and At Risk Management System review (*Parnell* [2024] WACOR 39).

O2. Treat autistic adults with co-occurring ADHD, intellectual disability, mental illness, polysubstance use history, or LGBTIQA+ identity as a high suicide risk cohort, and amend suicide prevention protocols accordingly.

O3. Refer coronial findings concerning persons with diagnosed or suspected neurodevelopmental disability, including *Parnell*, to the multi-agency disability-justice working group at J1, with findings reported to Parliament.

P. Partnering with disability-led justice work

P1. WA Government consider partner with and fund disability-led organisations running justice-specific neurodiversity standards and accessibility work in WA, including initiatives such as SWAN's Include Me, across all relevant courts, tribunals, police, prisons, and supervision pathways.

Section 17: Conclusion

The evidence before this Commission is clear. Autistic people, and people with intellectual disability, FASD, ADHD, ABI, and co-occurring neurodevelopmental conditions, are catastrophically over-represented at every stage of Western Australia's justice system. They enter the criminal justice pipeline through pathways created by diagnostic failure, inadequate community support, and a world designed for neurotypical people. They encounter a justice system that does not identify their disability, does not accommodate their communication needs, does not adjust its processes, and does not distinguish between behaviour that is disability-related and behaviour that is wilfully non-compliant. They serve sentences in custodial environments that punish disability-related behaviour, provide no therapeutic intervention, and release them into community settings with no adequate support plan.

This is not a new finding. It has been documented by the Disability Royal Commission, by the Office of the Inspector of Custodial Services, by the NDIA's own internal assessments, by coronial findings, by the UN CRPD Committee, and by disability advocates for decades. Western Australia has accepted the DRC recommendations in principle across the board. The gap between in-principle acceptance and implementation is the gap in which people are harmed or even die.

Project 115 has the opportunity to change this. The Commission has the power to recommend legislative reform that is grounded in the CRPD, that addresses structural causes rather than symptoms, and that creates a justice system in which autistic people, and all people with disability, can take part as equal citizens.

Western Australia has long had a reputation for leading the way in innovation for people with disability and our families. We ask that the suggestions in this submission be considered, to ensure that justice catches up and ensures better outcomes for those who need justice most of all.

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This submission has been prepared by the South West Autism Network (SWAN). June 2026.

SWAN thanks the Law Reform Commission of Western Australia for the opportunity to contribute to this important inquiry. We hope that the Commission will take the time to fully engage with the evidence presented and will produce recommendations that are equal to the scale of the crisis documented here.

Appendix: Recommendations in Full

This appendix sets out the full text of every recommendation summarised in Section 16, together with the rationale ("*Why:*") and the evidence, cases, and authorities relied on. The lettered grouping (A–P) and the recommendation codes (for example A1, D6, K1A) are identical to those used in the Section 16 summary, so the two can be read together.

These recommendations are grouped by theme. Each one is meant to be read alongside the evidence in the sections above. The language is deliberately plain, because the people most affected need to be able to read and use this submission too.

A. Communication and participation

A1. Amend the Criminal Law (Mental Impairment) Act 2023 (WA) so that autism on its own is included in the section 9 definition of mental impairment.

Why: As section 9 stands, an autistic person without a co-occurring intellectual disability or mental illness cannot use the Communication Partner Program, the fitness to stand trial framework, or the "fit with support measures" pathway. That leads to unfair trials, wrong findings on culpability, and disproportionate outcomes (*CFD* [2024]; *Mack* [2014]; *Coveney* [2026]; Section 4).

A2. Legislate a right to a communication partner or intermediary for any autistic or otherwise neurodivergent person in any WA legal proceeding, regardless of their role (accused, victim, witness, party, family member). The right should start at first police contact and continue through investigation, trial, and after.

Why: The current Communication Partner Program only covers accused and supervised people under the CLMIA. CRPD Article 13 and the UN Access to Justice Principles require communication support for every participant in the legal process. The ACT Intermediary Program shows it can be done (Sections 4.3 and 7.5).

A3. Set up a legislated intermediary scheme in WA, based on the ACT model. It should cover all participants in all proceedings, be available 24/7, draw on a pool of trained speech pathologists, occupational therapists, psychologists, and social workers, include a formal communication assessment before interviews and hearings, and brief the court on the specific communication needs of the person involved.

Why: A full scheme goes wider than the CLMIA Communication Partner Programme and meets the minimum standard of CRPD Article 13 and the UN Access to Justice Principles.

A4. Mandatory autism and communication training, at induction and annually, for all judicial officers, prosecutors, defence counsel, Legal Aid staff, court registry staff, police officers, transit security, and custodial officers.

Why: Training is necessary but not enough on its own. It needs to sit alongside legislated obligations.

A5. Require courts and tribunals to actively consider whether a section 32 “fit with support measures” finding under the CLMIA is appropriate before they make a finding of unfitness, and update sentencing guidance so that autism is expressly addressed in mitigation: culpability, deterrence, custodial hardship, and rehabilitation.

Why: Section 32 is under-used. Without explicit sentencing guidance, treatment of autistic accused is inconsistent (Verdins principles; *Coveney* [2026]; *Mack* [2014]; Section 6).

A6. Screen accused people in the Magistrates Court for cognitive impairment and communication needs before plea, using a validated tool that does not rely on self-report. A positive screen should trigger Communication Partner Program referral and consideration of CLMIA fitness pathways. The screen should cover autism, intellectual disability, FASD, brain injury, and complex trauma.

Why: The Magistrates Court is where most accused people with disability are first formally identified or, more often, not identified. Without systematic screening, disability is only flagged when a lawyer or family member raises it. The early CLMIA cases (*PYM* and *NG*, both 2024) show why this matters. This also implements DRC Recommendation 8.15.

A7. Amend the Mental Health Act 2014 (WA) and the Guardianship and Administration Act 1990 (WA) so that no guardianship order, administration order, ECT order, or community treatment order can be made for a non-verbal, minimally verbal, or AAC-using person without an independent communication assessment by a speech pathologist or accredited intermediary. The assessment must be on file and considered by the decision-maker.

Why: Tribunals routinely make substitute decision orders for non-verbal people without ever testing whether supported decision-making would have worked (GG line, Section 8.1B; CRPD General Comment No 1 at [21]).

B. CLMIA reforms

B1. Extend the Communication Partner Program to victims and witnesses in all WA courts, through a separate legislative instrument if needed.

B2. Review the section 27 Criminal Code "complete deprivation" threshold, considering whether a "substantial impairment" standard would better fit people with comorbid ASD and psychosis, while still protecting community safety.

Why: The current threshold excludes people who are genuinely substantially impaired without being completely deprived of capacity, producing unjust outcomes for comorbid presentations (*CFD* [2024]; Section 4.3).

B3. Use assessors with specific autism expertise for section 32 "fit with support measures" assessments, not just general psychiatric assessors.

B4. Close the residual indefinite-detention pathways under the *Criminal Law (Mental Impairment) Act 2023* (WA), consistent with CRPD Article 14, CRPD General Comment No 1, the Concluding Observations on Australia (CRPD

Committee, 2019, paragraphs 33 and 34), the PWDA Joint Submission (2026), and the work of McGee (*No End in Sight*) and Kayess. Specifically: (a) repeal or substantially narrow the extended custody order regime in Part 7 Division 5 (sections 110 onwards), which permits the Supreme Court to extend custody beyond the limiting term and operates as a renewable indefinite-detention mechanism; (b) remove the default life limiting term for murder and manslaughter under section 262 and reverse the onus so that any term in excess of the equivalent sentence must be justified by the State rather than displaced by the unfit accused; (c) progressively phase out custody orders for unfit accused altogether in favour of community supervision orders with funded NDIS, accommodation, and clinical supports, recognising that detention on the basis of unfitness alone, in the absence of a finding of guilt, is incompatible with CRPD Article 14.

Why: The CLMIA 2023 (WA), operational since 1 September 2024, was a significant advance on the *Criminal Law (Mentally Impaired Accused) Act 1996* (WA): custody orders now carry limiting terms tied to the equivalent sentence (section 50), the approximately 56 people held under indefinite custody orders under the 1996 Act have been brought back to court for limiting terms to be set (sections 261-265), and the new Mental Impairment Review Tribunal makes release decisions independently of the Attorney-General. SWAN acknowledges these reforms. The unfinished work is the residual pathway: extended custody orders, life-default limiting terms for murder and manslaughter, and custody for unfitness alone. McGee's *No End in Sight* and the CRPD Committee's 2019 Concluding Observations both treat these residual features as the next stage of reform, not the finishing line.

C. Sentencing and supervision

C1. Add explicit guidance to the Sentencing Act 1995 (WA) on how autism and other neurodevelopmental disability is relevant to: (a) culpability; (b) general deterrence, which is materially less applicable to autistic accused; (c) custodial

hardship; (d) rehabilitation; and (e) the realistic feasibility of supervision conditions.

Why: At the moment all of this is left to judicial discretion, producing inconsistent outcomes (*Coveney* [2026]; *Mack* [2014]; *Knott* [2010]; Section 6.9).

C2. Develop disability-informed assessment frameworks for sexual offence matters involving autistic defendants, addressing the limits of standard sex offender treatment programmes, the role of autistic fixation in online offending, and appropriate supervision conditions ([Allely and Creaby-Attwood, 2019]; *CFD* [2024]; *Hoskin* [2025]; Section 6.4).

C3. Require disability assessment of whether an autistic person can realistically comply with proposed supervision conditions under the CLMIA and the High Risk Serious Offenders Act 2020 (WA), before those conditions are finalised.

C4. Legislate joint planning between CLMIA and HRSO supervision orders and NDIS planning, so that the supervision conditions and the funded supports are designed together and reinforce each other (links to I1).

D. Custody conditions and oversight

D1. Amend the *Inspector of Custodial Services Act 2003* (WA) to insert an express statutory disability mandate, giving the Inspector explicit power to inspect, report, and recommend on the treatment of people with disability in custody, including autistic people, people with intellectual disability, FASD, ABI, ADHD, and co-occurring neurodevelopmental conditions. This implements DRC Recommendation 8.8 and responds directly to the gap identified by OICS itself in its 2022 statement to the Disability Royal Commission (OICS, 2022a), where the Inspector noted that the current Act contains no express reference to disability and that this absence constrains the office’s capacity to inspect and report on disability-related treatment.

Why: OICS has repeatedly told government that the absence of an express disability mandate is a structural problem. The June 2026 Show Cause Notice on

Hakea, Casuarina, and Melaleuca Women's Prison (OICS, 2026), only the fourth in WA's history, was issued because disability-related and other human rights failures had reached the level the Inspector described as "cruel, inhuman or degrading". An express disability mandate is the minimum precondition for the Inspector to do the work the office is being asked to do, and is consistent with the Department of Justice's existing Disability Access and Inclusion Plan obligations under the *Disability Services Act 1993* (WA).

D2. Establish a community visitor scheme for places of detention in WA, consistent with OPCAT and DRC Recommendation 11.12.

D3. Make disability training, including autism-specific content, mandatory and recurrent for all adult and youth custodial officers, court security staff, prisoner transport staff, and Disability Coordination Team members, with statutory minimum hours, independent curriculum review, and annual reporting on completion rates by site. The training must be co-designed with autistic people, people with intellectual disability, FASD, and ABI, and with Aboriginal disability-led organisations, and must be extended to Banksia Hill and any other youth custodial facility.

Why: The Department of Justice launched an online disability staff training module in August 2024 (Government of Western Australia, 2024). That is a starting point, not a finishing line. The module is currently optional, adults-focused, and not subject to independent curriculum review. The 2024 OICS report on people in custody with intellectual disability (OICS, 2024a, 2024b) and the 2025 Crisis Care Unit report (OICS, 2025) both record continuing failures of frontline disability recognition that training alone, voluntarily completed, will not fix. Section 14.1A explains why autism-specific content matters: a significant proportion of autistic adults do not meet the intellectual disability threshold but still require communication, sensory, and routine accommodations that custody routinely fails to provide.

D4. Amend custodial behaviour management policies so that known or suspected disability must be considered before any punitive response.

D5. Properly resource the Disability Coordination Team. The current ratio of 2.5 FTE for over 7,000 people is not a resourcing model. The minimum should be one Disability Coordination Officer per 200 people in custody (Section 14.1).

D6. Entrench in legislation, with statutory force, the requirement that every person entering adult or youth custody in WA is screened for disability using an independently validated, non-self-report tool that covers autism, intellectual disability, FASD, ABI, ADHD, and complex trauma; that a positive screen triggers Communication Partner Program referral, Disability Coordination Team engagement, and consideration of CLMIA fitness pathways; and that screening data is reported annually, disaggregated by Aboriginal and Torres Strait Islander identity, age, gender, and facility. This implements DRC Recommendation 8.15.

Why: WA introduced a functional impairment screening tool in August 2024 (Government of Western Australia, 2024), with formal validation work continuing through 2024 and 2025 (OICS, 2024a). The existence of the tool is welcome but insufficient: it is administratively, not statutorily, mandated; coverage is not universal; the youth pilot with the Forensic Mental Health Service is incomplete; and there is no statutory consequence attached to a positive screen. Entrenching the screen in legislation, with explicit downstream triggers and public reporting, converts an administrative initiative into a durable right and meets the standard set by DRC Recommendation 8.15.

D7. Extend the Inspector of Custodial Services' mandate and resourcing to cover all NDIS-funded residential accommodation in WA where residents are subject to restrictive practices. This includes SIL houses, forensic step-down accommodation, and CLMIA community supervision placements. The Inspector should be able to enter, inspect, report, and recommend, consistent with OPCAT obligations and CRPD Article 16.

Why: When the big institutions closed, restrictive practices moved into NDIS-funded houses that fall outside the Inspector's mandate and outside any independent inspection regime. *MS* [2020] WASAT 146 (Section 8.7B) and *T* [2024] WASAT 77 show the scale of restrictive practices now sitting in

community settings. Without independent inspection, the same patterns of isolation, chemical restraint, and seclusion will continue, unobserved, in community accommodation.

D8. Adopt and fund an overarching WA disability-in-custody model that explicitly covers autistic people (with and without co-occurring intellectual disability), people with intellectual disability, FASD, ABI, ADHD, and co-occurring neurodevelopmental conditions, across adult and youth custody. The model must integrate the Disability Coordination Team, the Disability Access and Inclusion Plan under the *Disability Services Act 1993* (WA), CLMIA supervision pathways, NDIS planning, and the Department of Justice's training and screening programmes into a single accountable framework, with published performance measures and independent oversight by OICS.

Why: OICS has repeatedly identified the absence of an overarching disability-in-custody model as a structural weakness (OICS, 2022a, 2024a). The current arrangements are a patchwork of voluntary training, an under-resourced Disability Coordination Team, a partially implemented screening tool, and a DAIP that is not visible on the wing. An overarching model is the difference between disability being someone's job in policy and disability being everyone's responsibility in practice.

D9. Establish a youth disability framework for Banksia Hill and any other youth custodial facility, covering autism, intellectual disability, FASD, ABI, ADHD, and complex trauma, with mandatory screening on entry, individualised support planning, communication support, sensory accommodations, and a complete prohibition on solitary confinement (see G5). The framework must be co-designed with First Nations disability-led organisations, the FPDN, autistic young people and their families, and must include the youth screening pilot currently being conducted with the Forensic Mental Health Service.

Why: Banksia Hill has been the subject of repeated coronial findings, class actions, and OICS reviews (OICS, 2024c, 2024d; Section 10). The withdrawn 2024 youth custody review (OICS, 2024c) and the 2024 security review (OICS,

2024d) together show that the youth system is operating without a coherent disability framework. A statutory youth framework, jointly owned by Corrective Services, the Department of Communities, the Department of Education, and the Mental Health Commission, is the minimum reform.

D10. Redesign the Crisis Care Unit at Casuarina Prison and any equivalent crisis unit on a therapeutic, trauma-informed, disability-informed basis, with mandatory disability screening on admission, communication and sensory accommodations, a documented prohibition on the use of the CCU as a punishment or behaviour management response, and an independent OICS-led review every two years. The redesign must explicitly contemplate autistic people, including those without co-occurring intellectual disability, whose sensory and communication needs are routinely incompatible with current CCU operation.

Why: The OICS Crisis Care Unit review (OICS, 2025) found that the CCU is being used as a default placement for prisoners in crisis, including those with autism and intellectual disability, in conditions that are anti-therapeutic and that often worsen the underlying crisis. The June 2026 Show Cause Notice (OICS, 2026) found similar patterns across Hakea, Casuarina, and Melaleuca. Section 14.1B sets out the evidence in detail.

D11. Require every justice setting, from courthouse to victim support unit, to develop and maintain its own Disability Access and Inclusion Plan, addressing local gaps and embedding best practice, including neurodiversity standards, into each regional department. This sits alongside the Department of Justice's existing DAIP obligations under the *Disability Services Act 1993* (WA) and the overarching disability-in-custody model at D8, but extends the obligation outward across the whole justice system rather than custody alone.

Why: A single department-wide DAIP cannot capture the local, setting-specific barriers an autistic person meets at a regional courthouse, a victim support unit, or a tribunal registry. Requiring each setting to hold its own plan, with neurodiversity standards built in, is how environmental and procedural access stops being aspirational and becomes a local, auditable obligation. This

complements the Include Me partnership work at P1 and the structural safeguarding approach at M1, M2, and M5.

E. Guardianship and supported decision-making

E1. Urgently implement the LRCWA Project 114 supported decision-making recommendations and, in line with CRPD General Comment No 1 (2014) and the Concluding Observations on Australia (CRPD Committee, 2019), amend the *Guardianship and Administration Act 1990* (WA) to abolish substitute decision-making regimes for adults and replace them with a universally available supported decision-making framework, with appropriate safeguards. Embed DRC Recommendation 6.6.

Why: The CRPD Committee, the PWDA Joint Submission (2026), Kayess, and McGee all identify the abolition of substitute decision-making, not its reform or refinement, as the CRPD-compliant standard. Strengthening guardianship by adding more procedural safeguards continues a regime that General Comment No 1 says is incompatible with Article 12. A staged transition is appropriate, but the destination must be supported decision-making for all, not a more humane version of substitute decision-making.

E2. Develop specific provisions for how supported decision-making works at the criminal-civil interface, especially for forensic patients who have both a CLMIA supervision order and a guardianship order.

E3. Repeal the guardianship “gag laws” so that represented persons can publicly tell their own stories, consistent with the Project 114 recommendation.

E4. Make the Mental Health Act 2014 (WA) ECT regime (sections 409-415) accessible and independently reviewable, with communication support for patients in Mental Health Tribunal proceedings.

E5. Create a simpler, non-adversarial pathway for families who are managing well to formalise their authority without going through full Tribunal guardianship proceedings. This responds to *CH* [2024] WASAT 31 and similar cases.

E6. Amend the *Guardianship and Administration Act 1990* (WA) to expressly prohibit non-therapeutic sterilisation of any person with disability, whether male or female, reversible or irreversible, in line with CRPD Articles 12, 17, and 23, paragraphs 33 and 34 of the 2019 Concluding Observations on Australia (CRPD Committee, 2019), DRC Recommendation 6.41, and the 2013 Senate Community Affairs References Committee recommendation. Where an application is made on a strictly therapeutic basis to address a serious and imminent medical condition, the following are mandatory before SAT can authorise any procedure under section 59: (a) documented referral to and engagement with SECCA or an equivalent disability-led sex education and relationships service; (b) a documented supported decision-making process involving People First WA or an equivalent self-advocacy organisation, where the person can identify that support; (c) consideration and documented exclusion of every reversible alternative, including long-acting reversible contraception, behaviour support, sex education, and supported relationships; (d) an express statement of compliance with CRPD Articles 12, 17, and 23; and (e) where the application concerns a man, an express finding addressing whether the application is part of a pattern of sterilising men with intellectual disability without therapeutic justification.

Why: AB [2026] WASAT 31 and *JC* [2026] WASAT 13 show that the current framework, even with section 110ZD(7) banning person-responsible consent, still allows sterilisation of men with intellectual disability without engaging with supported decision-making, sex education, or reversible alternatives (Section 8.7A). CRPD jurisprudence, the PWDA Joint Submission (2026), and the work of Kayess and McGee treat the prohibition of non-therapeutic sterilisation, not better procedural safeguards around it, as the required standard.

E7. Legislate mandatory consideration of restrictive practice authorisation under the NDIS (Restrictive Practices and Behaviour Support) Rules 2018 in any guardianship proceeding involving a person subject to restrictive practices, and require SAT to record on the order whether the person has a current Behaviour

Support Plan and Authorisation. Responds to *MS* [2020] WASAT 146 and *T* [2024] WASAT 77.

F. Family law and child protection

F1. Amend the Children and Community Services Act 2004 (WA) to legislate procedural accommodations for parents with disability in child protection proceedings: communication support, plain language documents, and extended timelines.

F2. Develop disability-informed and autism-adapted parenting capacity assessment frameworks, co-designed with autistic and disabled parents.

F3. Co-design culturally appropriate parenting capacity assessment principles for First Nations parents with disability, implementing DRC Recommendation 9.1.

F4. Require child protection systems to assess the impact of NDIS funding changes on families with disability before making removal decisions.

G. Youth justice

G1. Raise the minimum age of criminal responsibility in WA to at least 14, consistent with DRC Recommendation 8.22.

G2. Screen for disability at every entry point to the youth justice system, using a validated, non-self-report tool.

G3. Fund and implement a therapeutic, non-punitive, trauma-informed operating philosophy at Banksia Hill and any other youth custodial facility.

G4. Fund dedicated therapeutic diversion pathways for young people with ASD, FASD, intellectual disability, and other neurodevelopmental conditions.

G5. Prohibit by statute the use of solitary confinement (defined consistently with rules 43 to 45 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, the Mandela Rules) for any person with disability, whether child or adult, in any custodial or detention facility in WA. This extends DRC Recommendation 8.3 to its CRPD-compliant scope, consistent with the position

of the UN Special Rapporteur on Torture that prolonged solitary confinement of persons with disability constitutes cruel, inhuman or degrading treatment.

Why: DRC Recommendation 8.3 addresses children. The CRPD framework, the Mandela Rules, and the UN Special Rapporteur on Torture treat solitary confinement of any person with disability as the threshold concern, regardless of age. The 2025 OICS Crisis Care Unit report (OICS, 2025) and the June 2026 Show Cause Notice (OICS, 2026) document continued use of effectively solitary conditions for adults with disability in WA. PWDA and Kayess take the same position: solitary confinement of any person with disability, not only children, must end.

G6. Implement and publicly report against the outstanding 2024 OICS youth custody review and the OICS Banksia Hill security review (OICS, 2024c, 2024d), including the disability-specific recommendations the Department of Justice indicated it would not progress. Re-table the withdrawn 2024 youth review for parliamentary consideration, and require the Department of Justice to publish a costed implementation plan within six months.

Why: Section 10.4A sets out the evidence. A review whose disability findings are withdrawn or quietly shelved is not accountability. Re-tabling the review and requiring a costed response is the minimum step.

H. Aboriginal autistic people

H1. Develop and implement a culturally validated disability screening tool, co-designed with FPDN and Aboriginal autistic people.

H2. Increase the NDIA First Nations workforce in WA, including Aboriginal disability workers in remote communities.

H3. Ensure CLMIA community supervision orders cannot be implemented where there is no culturally safe accommodation and support, and ensure that absence does not become a reason to keep someone in custody.

H4. Implement DRC Recommendation 8.16: increased resources for First Nations organisations providing culturally safe support services in custody.

H5. Disaggregate disability data by Aboriginal and Torres Strait Islander identity at every stage of the WA criminal justice system.

H6. Routine disability assessment in every WA death in custody investigation, with results disaggregated by Aboriginal identity.

I. NDIS interface

I1. Legislate joint planning between CLMIA / HRSO supervision orders and NDIS planning, with a "no release without a funded plan" principle: no person with disability held in WA custody can be released under a supervision order without an active, funded NDIS plan in place.

I2. Legislate NDIS Justice Liaison Officers at every WA custodial facility, with adequate resourcing for the population.

I3. Advocate to the Commonwealth to: (a) protect autistic people's NDIS access from the permanence test in the 2026 Bill; (b) preserve plan continuity after custody; (c) require individual review of Ministerial determinations; (d) ensure no one is removed from the Scheme before foundational supports are in place.

I4. Urgently implement DRC Recommendation 8.18: NDIA-funded transition supports from at least 90 days before release.

I5. Reject the 1:3 SIL ratio as a default for autistic people with complex needs or offending histories. Require individual assessment.

I6. Resolve the APTOS boundary disputes about whether a support is disability-related or criminogenic, implementing DRC Recommendation 8.17.

I7. Properly resource the NDIS-CLMIA community supervision interface, including a funded forensic disability support workforce, transition accommodation that is not only SIL, and an NDIS Quality and Safeguards Commission protocol for participants under CLMIA orders. *PYM* and *NG* (both

2024) show the basic operational lesson: an Act that contemplates community supervision cannot operate without funded community support (Section 4.4).

J. Coronial and accountability

J1. Establish a multi-agency disability-justice working group to systematically review coronial findings involving people with disability, with findings used to drive legislative and policy change.

J2. Encourage coroners investigating deaths involving disability to commission independent expert evidence on disability-related care and support, not just medical cause of death.

J3. Review any NDIS SIL refusal decision where the person subsequently dies in circumstances connected with their disability.

J4. Develop and implement a WA Police disability-informed crisis response protocol, including for mental health and neurodevelopmental crisis, that does not default to force or restraint as a first response.

J5. Secure funding to expand the Mental Health Co-Response, a mental health clinician attending crisis call-outs with police, across regional and remote WA toward 24/7 coverage, with defined clinical pathways for people with co-occurring conditions (such as autism with mental illness, intellectual disability, FASD, ADHD, brain injury, or substance issues) so that responders connect them to ongoing care rather than discharging them or routing them to custody or an emergency department.

Why: The Co-Response model works, but it only reaches metro Perth, Geraldton, and Bunbury, often part-time. Everywhere else, people in crisis get a police-only response, which is the point at which autistic and otherwise neurodivergent people are most likely to be criminalised, injured, or killed rather than supported. Expanding it to regional and remote WA is a direct, evidenced way to divert people with disability out of the justice pipeline before contact escalates (Section 5; Parnell [2024] WACOR 39).

K. Civil and tribunal access

K1. Amend the Criminal Injuries Compensation Act 2003 (WA) to expressly accommodate people with disability throughout the claims process.

K1A. Amend the CIC Act extension-of-time provisions so that the assessor and the District Court must give specific weight to disability-related incapacity to engage with the legal system when applying the just test. Responds to *Re SR* [2025] WADC 37 (Section 13.2A).

K1B. Develop a CIC practice direction providing for systematic offer of support persons, communication assistance, and procedural accommodation to pseudonymised parties and other parties identifiable as having disability. Responds to *Re SMB* [2025] WADC 24 and *Ex Parte ABC* [2025] WADC 17.

K1C. Establish a disability-accessible psychological injury pathway in the WA workers compensation system, with simplified procedure, communication accommodation, and resourced legal assistance for rural and regional claimants. Responds to *Morgan v Roman Catholic Archbishop of Perth* [2025] WADC 38 and *Lourey v WA Country Health Service* [2025] WADC 19 (Section 13.4A).

K1D. WA Government to formally oppose the workers compensation and motor vehicle accident scheme exclusion in the Commonwealth NDIS Amendment (Securing the NDIS for Future Generations) Bill 2026, advocate for retention of the existing sections 104 and 105 coordination framework, and quantify the additional load the proposed exclusion will impose on WorkCover WA, the WA motor vehicle injury scheme, the District Court arbitration appellate pathway, and the WA justice and custodial systems (Section 13.4B).

K2. Adopt a disability access framework in the State Administrative Tribunal consistent with CRPD Article 13.

K3. Extend legal aid and assistance for people with disability across all civil, family, guardianship, and child protection proceedings.

K4. Repeal section 5 of the *Juries Act 1957* (WA), which presumptively excludes people with disability from jury service, and replace it with an accommodation-based framework consistent with CRPD Article 13 and the UN International Principles and Guidelines on Access to Justice. This acknowledges and builds on LRCWA Project 99 (Selection, Eligibility and Exemption of Jurors), the April 2026 final report of which addresses jury reform.

Why: Excluding people with disability from jury service categorically, rather than providing accommodations, breaches CRPD Article 13(1). LRCWA Project 99 has already done significant work in this area; SWAN's recommendation builds on, rather than duplicates, that work.

K5. Legislate a WA disability data framework that requires the collection and public reporting of disaggregated disability data across the WA criminal justice, civil justice, child protection, guardianship, and coronial systems, disaggregated by disability type (autism, intellectual disability, FASD, ABI, ADHD, mental illness), Aboriginal and Torres Strait Islander identity, gender, age, LGBTIQA+ status, and geographic location. This acknowledges the National Disability Data Asset (NDDA) framework and the work of the Australian Institute of Health and Welfare, and gives effect to CRPD Article 31 and the 2019 Concluding Observations on Australia.

Why: Without disaggregated data, the disability dimension of the WA justice system remains invisible, except where individual coronial findings or OICS reviews force it into view. PWDA, FPDN, Kayess, and McGee all identify disaggregated data as a CRPD Article 31 obligation. The NDDA provides an existing federal architecture WA can plug into.

L. Commonwealth advocacy on the 2026 NDIS Bill

L1. The WA Government to formally advocate to the Commonwealth that the NDIS Amendment (Securing the NDIS for Future Generations) Bill 2026 not proceed in its current form, and to require, as a condition of any NDIS access changes: (a) full foundational supports in place and accessible; (b) individual

review rights for all funding changes; (c) explicit protections for justice-involved participants; and (d) demonstrated CRPD compliance.

M. Structural safeguarding

M1. Adapt a disability justice structural safeguarding model for WA, so that Project 115 access to justice reforms are implemented alongside the safeguarding layers that should keep people out of the justice system in the first place. The Free and Equal Australia Cheeseboard Model is one available framework and is discussed at Section 13A.

M2. Sequence and resource all Project 115 access to justice reforms alongside foundational supports: accessible housing, transport, inclusive information, and anti-ableism workforce reform.

M3. Commission an audit of safeguarding gaps for disabled people across the criminal-civil-coronial interface, with particular attention to Aboriginal disabled people, autistic mothers, young people at Banksia Hill, non-verbal and AAC-using people, and people in NDIS-funded residential accommodation.

M4. Move from oversight to elimination of restrictive practices in WA, in line with CRPD Articles 14, 15, 17, and 19, the CRPD Committee's Concluding Observations on Australia (2019), DRC Recommendation 6.36, the PWDA Joint Submission (2026), and the work of Kayess and McGee. Legislate a time-bound reduction and elimination plan for chemical, physical, mechanical, environmental, and seclusion-based restrictive practices across NDIS-funded settings, mental health facilities, custodial facilities, and supported accommodation in WA, with public reporting, independent oversight, and a statutory end date. Coordinate with the Commonwealth and the NDIS Quality and Safeguards Commission, and partner with disability representative organisations on co-design.

Why: Current frameworks regulate restrictive practices; they do not eliminate them. The CRPD treats restrictive practices as a human rights violation requiring elimination, not better paperwork. *MS* [2020] WASAT 146 and *T* [2024] WASAT 77 (Section 8.7B) show the scale of restrictive practices in WA community

settings. PWDA, Kayess, and McGee all align on elimination, not oversight, as the standard.

M5. Treat foundational and attitudinal safeguards as preconditions for access to justice, and use them as the basis for cross-portfolio funding decisions affecting disabled people, rather than letting them fall between Commonwealth and State responsibility.

M6. WA Government to formally advocate to the Commonwealth that Australia withdraw its interpretative declaration on Article 12 of the CRPD, consistent with the position of the CRPD Committee (Concluding Observations on Australia, 2019), PWDA, Kayess, and McGee. Until the declaration is withdrawn, WA should legislate as though it has already been withdrawn, treating CRPD Article 12 as binding on its full text.

Why: The Article 12 interpretative declaration is the formal instrument by which Australia preserves substitute decision-making. The CRPD Committee has repeatedly recommended its withdrawal. PWDA's Joint Submission (2026) and the work of Kayess and McGee identify withdrawal as a precondition to genuine CRPD compliance. WA can act in advance of the Commonwealth.

N. LGBTIQA+ autistic people

N1. WA Government to review *Commissioner's Operating Policy and Procedure 4.6 Trans, Gender Diverse and Intersex Prisoners* against the lived experience of LGBTIQA+ disabled prisoners, including autistic, intellectually disabled, and mental-health-affected prisoners. The review should be done in consultation with TransFolk of WA, SWAN, People With Disabilities WA, the WA AIDS Council, and Aboriginal community-controlled LGBTIQA+ organisations (Sections 11A.4 to 11A.5).

N2. Amend WA deaths in custody data collection and coronial reporting to record, with appropriate privacy protections, neurodevelopmental disability status (autism, intellectual disability, ADHD, FASD) and LGBTIQA+ identity, so that pattern detection across these intersections becomes possible (Section 11A.6).

N3. WA Department of Justice to publish annual data on the number, placement, search arrangements, single-cell access, healthcare access, and incident exposure of trans, gender diverse, and intersex prisoners, with disability disaggregation.

N4. Include LGBTIQA+ community visitors and disability community visitors with relevant lived experience in the community visitor scheme at D2, so the perspective of the most isolated cohorts is independently represented.

N5. Include the autism, intellectual disability, mental health, and LGBTIQA+ intersection in the workforce training mandated under A4, addressing minority stress, family rejection, and suicide risk.

O. Suicide and the diagnostic gap in justice

O1. WA Department of Justice to implement a routine in-custody autism diagnostic assessment pathway where prison health, mental health, or custodial records contain notations of “possible autism” or equivalent observations. A positive outcome should trigger Communication Partner Program referral, Verdins re-evaluation if relevant to sentencing, and review under the At Risk Management System (*Parnell* [2024] WACOR 39; Section 11B.2).

Why: The Parnell finding records a 2018 file note of “possible autism” that was never followed up by any diagnostic assessment, communication support, or At Risk Management System review. Robert Parnell died in 2022 at Albany Regional Prison. The justice system can fix the part of this it controls, by acting on the file notes it already creates.

O2. Treat autistic adults with co-occurring ADHD, intellectual disability, mental illness, polysubstance use history, or LGBTIQA+ identity as a high suicide risk cohort within the WA custodial system, and amend suicide prevention protocols to reflect the elevated risk identified in the international literature (Cassidy et al., 2018; Hirvikoski et al., 2016).

O3. Refer coronial findings concerning persons with diagnosed or suspected neurodevelopmental disability, including the *Parnell* finding, to the multi-agency disability-justice working group at J1, with findings reported to Parliament.

P. Partnering with disability-led justice work

P1. WA Government to partner with and fund disability-led organisations running justice-specific neurodiversity standards and accessibility work in WA, including initiatives such as SWAN's Include Me, so that institutions adapt rather than continuing to expect autistic and neurodivergent people to absorb the cost of inaccessible systems. The institutions in scope should include WA Police, the Magistrates Court, the District Court, the Supreme Court, the Children's Court, the Coroner's Court, the Family Court of WA, the State Administrative Tribunal, the Mental Health Tribunal, adult prisons, Banksia Hill, forensic and step-down accommodation, and CLMIA community supervision pathways. Section 14A outlines what this kind of work looks like in practice and is offered as an illustration only.