



Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

July 2020

Introduction

The Centre for Innovative Justice at RMIT University (CIJ) with the Voices for Change self-advocacy group welcomes the opportunity to provide a submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. This submission is intended to be read in conjunction with the Our Voices podcast series which forms part of the CIJ and Voices for Change submission to the Royal Commission.

The CIJ with Voices for Change recognise that this Royal Commission provides a unique opportunity to recommend ways of working differently, so that we can address the overrepresentation of people with disability in prisons and throughout Australia's criminal justice systems.

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About us

The Centre for Innovative Justice

The CIJ was established in 2012 to explore innovative ways to improve the justice system, with a focus on people's lived experiences. The CIJ's objective is to develop, drive and expand the capacity of the justice system to meet and adapt to the needs of its diverse users. The CIJ meets this objective by conducting rigorous research which focuses on having impact – taking our research findings, most of which involve direct engagement with service users, and using them to develop innovative and workable solutions.

CIJ brings together an experienced team of multi-disciplinary researchers and practitioners to develop solutions to complex problems through research and innovation that is strategic, accessible and practical. Our approach is centred on the experiences of those people and communities who are affected, and brings stakeholders together to work collaboratively on designing solutions. The Centre's work includes research on therapeutic jurisprudence, restorative justice, victim services, family violence, women's decarceration, disability in the criminal justice system, as well as the application of human-centred design to legal issues and processes. The CIJ includes Open Circle, a service that provides restorative justice consultancy and research as well as delivering restorative justice conferences.

The Centre is co-located at RMIT University's Social Innovation Hub with three community legal centres: Youth Law; the Mental Health Legal Centre and the Law and Advocacy Centre for Women. We benefit from a close working relationship with the Voices for Change self-advocacy group and have incorporated the voices of the self-advocates as people with lived experience of the criminal justice system into this submission.

Voices for Change

The Voices for Change self-advocacy group is for people who have an acquired brain injury and who have had contact with the criminal justice system. All members of the group want to see and contribute to changing the system to make it better.

The members of Voices for Change completed training in 2019 to develop skills and build confidence to become self-advocates. That training was called Voices for justice and was a project of the Self-Advocacy Resource Unit (SARU), supported by the CIJ. The Voices for Justice (VFJ) training was adapted from SARU's Voice at the Table program which supports people with cognitive impairment to prepare for roles on advisory committees, boards and as expert consultants on their own experience.¹

There are six foundation members of Voices for Change, five of the members participated in the Our Voices podcast series. The podcast series was produced with CIJ as a way of communicating the group's message for change to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. The series is being distributed by SYN Media, it is accessible to the public through podcast applications and online.² A full transcript of the podcast series is attached as an annexure to this submission.

Defining Disability

We understand that disability can refer to any of a wide range of conditions or impairments which, coupled with environmental, attitudinal and other barriers, may hinder a person's full and effective participation in society on an equal basis with others. While acknowledging the contested meanings and different opinions regarding respectful use of language in this context, in this submission we use the term 'people with disability' to refer to people who, because of their disability, illness or impairment, are at risk of becoming entrenched in cycles of disadvantage by a criminal justice system that does not adequately support them or respect their rights. We acknowledge that people with cognitive or neurological disability and people experiencing mental ill-health or distress are particularly at risk of becoming entrenched in cycles of disadvantage in the criminal justice system.

¹ More information about the Voice at the Table training program is available on their website:

<https://voiceatthetable.com.au/>

² The Our Voices Podcast is available on most podcasting applications, it can also be accessed from this link:

<https://omny.fm/shows/our-voices-podcast>



Our experience

Enabling Justice project

Soon after its establishment, the CIJ in partnership with Jesuit Social Services undertook the Enabling Justice project. The project was funded through a grant administered by the Office of the Public Advocate and examined the overrepresentation of people with acquired brain injury (ABI) in Victoria's criminal justice system. The project was initiated in response to a 2011 study that found 42 per cent of men and 33 per cent of women in Victoria's prisons have an acquired brain injury while the prevalence of acquired brain injury in the general population is under 3 per cent.³ Through Enabling Justice, the CIJ and Jesuit Social Services sought to draw out the missing perspectives on the solutions from the people with lived experience of the criminal justice system and ABI.

Enabling Justice's findings documented in the report *Recognition Respect and Support: Enabling Justice for people with an Acquired Brain Injury*,⁴ showed that fragmented and inconsistent responses throughout the criminal justice and disability service systems meant that the needs of people with a disability were rarely recognised and responded to appropriately.

Central to this project were people with acquired brain injury and lived experience of justice involvement, who formed the project's Justice User Group. Thirty-five recommendations were developed by the project partners, participants and members of the Justice User Group, addressed to the criminal justice system as a whole, as well as specific parts of the system. These recommendations reflect the participants' need for a system that delivers recognition, respect and support to people with ABI. These recommendations call for a criminal justice system that:

- listens to the voices of people with ABI; that focuses on responding more to their support needs, not only to their perceived risk; that provides holistic support;
- links justice and health services more effectively; and
- provides people with ABI with access to stable and affordable housing, linked to support.

The report's findings and recommendations were formulated, 'road-tested' and workshopped with the Justice User Group to ensure they were fit for purpose. The recommendations are examples of how the system might respond to the three key justice needs of people with ABI that were identified through the project: recognition, respect and support.

Recognition

ABI needs to be recognised as a disability within the criminal justice system. For ABI to be recognised, the system must acknowledge ABI as a disability even though it often occurs alongside other forms of disability and disadvantage. The system must also recognise that a person with ABI may have additional communication and support needs. People working within the system must have an awareness of the causes, symptoms and common support needs of people with ABI. The system must make those supports known and available to people who have or are suspected of having ABI. Where their ABI is recognised, people can feel more confident to disclose their ABI and access services suited to their needs.

Respect

Enabling Justice project participants reported the significance of being treated with respect in their contact with the justice system. It is a fundamental expectation that our justice system treats all people with respect, in accordance with their basic human dignity, regardless of their status within it. Whether they are offenders or prisoners or victims or witnesses, people with ABI are entitled to respect. This includes treating people with dignity and enabling them to participate meaningfully in processes that affect them. In the criminal justice system, this can take many forms, including the use of plain English to ensure people with ABI can understand and meaningfully participate in their legal processes. The benefits of treating people with respect include a greater likelihood that a sentence will be complied with, that a court appearance can be a catalyst

³ Martin Jackson et al., 'Acquired Brain Injury in the Victorian Prison System' *Corrections Victoria Research Paper Series* (2011) Paper No. 4.

⁴ Centre for Innovative Justice and Jesuit Social Services, *Recognition, Respect and Support: Enabling Justice for People with an Acquired Brain Injury* (2018); the full *Enabling Justice Report* is included as an annexure to this submission.



for long term behavioural change, and, for the justice system, legitimacy. Disrespectful treatment, on the other hand, is likely to limit rehabilitation for people with ABI and have negative impacts on their wellbeing. Participants who felt respected were more likely to comply with the law and reported the positive impact of the interaction on their lives. Many of the elements of respectful treatment can be met within existing system resources; they just require the will of people working within the criminal justice system to adopt a respectful approach.

Support

Many Justice User Group members felt they were “set up to fail” due to the lack of disability-specific services available, both within the justice system and in the broader community. A range of measures is recommended to improve support for people with ABI, as adapted to the particular needs of each person – from providing an Independent Third Person at police interviews to offering intensive case management. Such support services should provide the same adjustments that are routinely made for people with other recognised disabilities. Insecure housing was identified by many project participants as a significant factor in their cycles of offending and re-offending. Supporting people with ABI to access secure housing would make a substantial difference in promoting their stability, facilitating long-term support and ultimately reducing recidivism.

Recommendation 1

That all Australian Governments and key stakeholders across Australia acknowledge the need to increase recognition, respect and support for people with Acquired Brain Injury (ABI) in the criminal justice system and improve access to justice for people with ABI in Australia.

Recommendation 2

That the Commonwealth and Victorian Governments review and implement the recommendations made in the report *Recognition Respect and Support: Enabling Justice for people with an Acquired Brain Injury*.

Supporting Justice project

Building on the findings of Enabling Justice, the Supporting Justice project is continuing CIJ’s work to address the overrepresentation of people with disability in the criminal justice system. Supporting Justice is a system change project working with key stakeholders from the criminal justice and disability service systems to find opportunities for systemic change. The project has embedded lived-experience within the project team. Dorothy Armstrong, a member of the Enabling Justice project’s Justice User Group and 2018 Victorian Disability award winner, is employed as an adviser and peer support worker on the project.

In its first 18 months, the Supporting Justice project has:

- Developed an online resource, supportingjustice.net. CIJ worked with design firm Paper Giant to develop a website which provides practical resources to assist professionals and people with disability to navigate the criminal justice system and available disability support;
- Supported the Self-Advocacy Resource Unit at Melbourne’s Ross House to develop and deliver the Voices for Justice training project to people with an acquired brain injury who have had contact with the justice system to develop confidence and skills to become self-advocates;
- Worked with the graduates of the Voices for Justice training to support their efforts to establish a self-advocacy group: Voices for Change, including the production of a podcast series ‘Our Voices’ featuring the group members;



- Created a Supporting Justice System Map of the Victorian criminal justice system. The map is a visual tool to communicate the complexity of the criminal justice system by illustrating the factors that impact a person with disability as they interact with the system;⁵ and
- Engaged with a broad range of stakeholders to identify four key priority areas for intervention in the criminal justice system to reduce the overrepresentation of people with disability.

SupportingJustice.net

The CIJ worked with design firm Paper Giant to develop a website to provide resources to assist court and legal professionals to work more effectively with people with disability in the criminal justice system. The development of the website used a human centred design approach which drew in stakeholders from across the disability, justice and social service sectors.

The design process included a number of co-design sessions which brought together magistrates, lawyers and senior policy makers with people with cognitive disabilities and lived experience of the criminal justice system. The process uncovered systemic issues that have informed the broader Supporting Justice project and reaffirmed the value of having the voices of people with lived experience at the centre of systems design work.

The website is live at supportingjustice.net. It provides practical resources to:

- enhance the likelihood that people with disability in contact with the criminal justice system are given access to least restrictive interventions and are connected to more appropriate support;
- increase the understanding of lawyers, court staff, judicial officers, broader criminal justice and disability support system workers around least restrictive options available;
- increase the investigation, promotion and engagement of least restrictive options for people with cognitive impairment by courts, legal professionals and other stakeholders in the criminal justice system; and
- provide information and tools to criminal justice system workers and people with disability about the NDIS.

Welcome to Supporting Justice

People with [cognitive impairment and intellectual disability](#) have the right to be treated fairly in the criminal justice system in Victoria.

Supporting Justice provides [practical resources](#) to help people in the criminal justice system get fairer outcomes and [needs-based support](#).



Website features include:

- Personal stories of people with disability and lived experience of the criminal justice system;
- Facts and statistics to help legal and court professionals recognise the signs of disability;
- Practical guides and downloads to support awareness of disability and less restrictive options for people with disability in the criminal justice system, including the promotion of the NDIS, support pathways and therapeutic sentencing courts;
- Quick access contact details of services and programs appropriate to achieving less-restrictive options for people with disability in the criminal justice system; and

⁵ A larger copy of this map is included as an annexure to this report. To download a full-size version, please visit: <https://cij.org.au/research-projects/supporting-justice-system-map/>



- Information about how and why the resource was created, and who to contact with questions or feedback on the resource.

Since its launch in early 2020, the CIJ has been approached by interstate stakeholders expressing a need to nationalise the website and its resources.

Recommendation 3

That the Commonwealth Department of Social Services and Attorney General's Department provide funding to develop a national online resource to support court and legal professionals and people with disability navigate the justice system and make available disability supports to improve outcomes for people with disability.

Increasing self-advocacy capacity

In 2019, the Supporting Justice project supported the Self-Advocacy Resource Unit to develop and deliver the Voices for Justice self-advocacy training. This training was the genesis of the Voices for Change self-advocacy group. The project's goal was to develop more self-advocates with disability and lived experience of the criminal justice system to have the confidence and skills to engage in advocacy and decision-making which affects them. The self-advocacy model empowers individuals to have a voice in decisions that impact on their experience.

The Voices for Justice training was been adapted from SARU's Voice at the Table (VATT) program which supports people with cognitive impairment to prepare for roles on advisory committees, boards and as consultants on their own experience.

The Voices for Justice training project graduated its first cohort of graduates in December 2019. The training has been transformational for its participants, it provided an opportunity to connect with a group of peers and build strength to start to speak about their experiences in positive and constructive ways.

Recommendation 4

That all Australian Governments and criminal justice system organisations invest and engage with criminal justice self-advocacy groups, properly fund capacity-building organisations like the Self-Advocacy Resource Unit in Victoria and explore ways of increasing opportunities of self-advocates to contribute to justice reform processes that affect them.

Supporting Justice System Map

The Supporting Justice System Map is a visualisation of some of the factors that impact on people with disability in contact with the criminal justice system. The map was developed by CIJ, together with design firm Paper Giant, as part of the early design work to create supportingjustice.net. People with lived experience, together with stakeholders from across the justice, disability and social service sectors contributed their time to consult on the creation of this resource. System maps are diagrams common to 'systems practice'⁶ that:

- trace the sequence and cause and effect through a situation or system;
- show how situations, events and outcomes have more than one cause, and how looking at this can deepen understanding as to why an event or result happens, or why something recurs; and
- help participants reach their own views about what's happening in a system.

The Supporting Justice System Map does not:

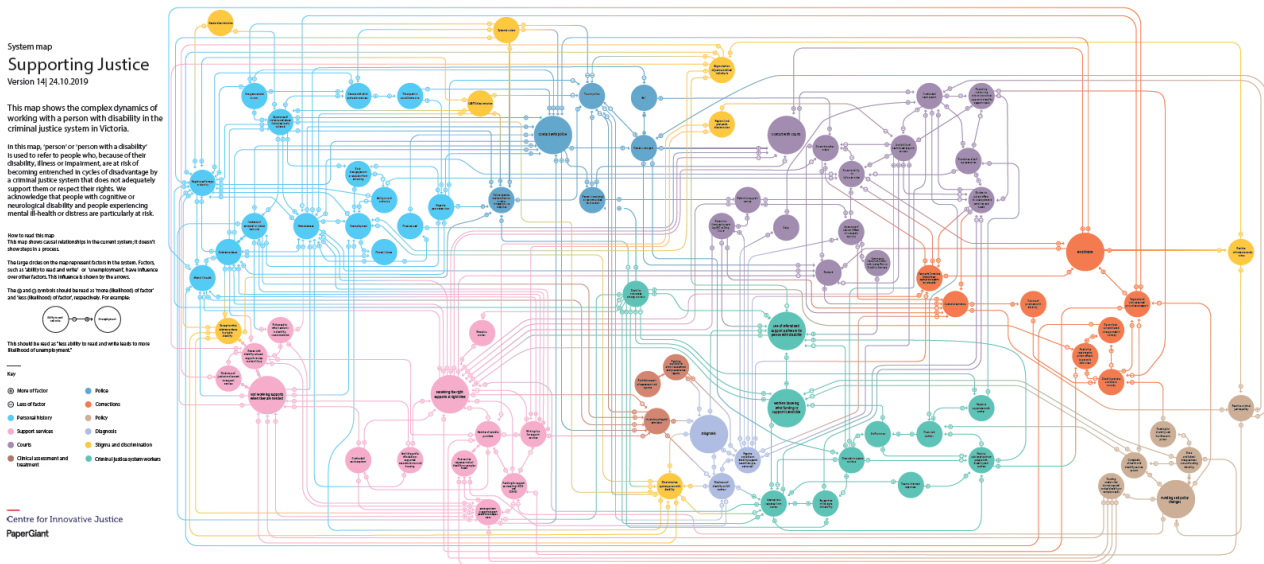
- show individual steps in a process; or

⁶ 'Systems practice' is a way of thinking about complex problems that occur across large and interweaving systems. For more information see the [Omidyar Systems Practice Workbook](#)



- claim to be a complete or empirical representation of the entire system - there are many possible ways to represent any system.

The map visualises the ways in which parts of the criminal justice system interact with and impact upon people with disability. The map was designed to facilitate consultation about ways to reduce the overrepresentation of people with disability in the criminal justice system and identify strategic points of intervention. When consulting with stakeholders, the Supporting Justice project found that the visualisation helped participants see their part in a broader system. It encouraged many system stakeholders to think about the justice process from the perspective of a person with disability moving through a complex web of different justice and disability services and influences on their pathways in and out of the justice system.



Supporting Justice System Map – a larger version of this image is included as an annexure to this report. A full version can be downloaded from the CIJ website: cij.org.au.

Our priorities for change

“(T)he overrepresentation of people with disability and Indigenous people in custody has been known for a really, really long time. And I really struggle to come up with words to describe how that makes me feel, that still all these years later, it’s still the same. It’s still the same general people that are presenting and it hasn’t changed.”

- Dorothy Armstrong, Voices for Change

The Supporting Justice project conducted consultations throughout 2019 with a broad range of Victorian stakeholders from across the disability, justice and social service sectors to understand where there are strategic opportunities to intervene in the criminal justice system to address the overrepresentation of people with disability. The members of the Voices for Change group were instrumental in participating in these consultations and helping the Supporting Justice project understand which areas should form our priorities for change.

Those priority areas are:

- **Housing:** improving pathways into secure long-term housing for people with disability in the criminal justice system;
- **Early intervention:** improving early intervention and diversion for people with disability in contact with or at risk of contact with the criminal justice system;



- **Disability and trauma awareness:** improving trauma and disability informed practice in the criminal justice system; and
- **System collaboration and information sharing:** improving cross-sector communication and information sharing to improve outcomes of people with disability in the criminal justice system.

This submission sets out recommendations connected to these four areas and demonstrates the case for change through the lived-experiences of the Voices for Change self-advocates drawn from the Our Voices podcast transcript.⁷

Housing

“(T)he housing list is getting tighter and tighter and you’ve got more people, they’re building bigger jails. So obviously there’s something, if someone can’t see the pattern, there’s something wrong.”

- Michael Mayne, Voices for Change

The lack of available housing stock; poor coordination between justice, disability and housing services; as well as difficult pathways into housing for people with justice contact and disability are areas that urgently need to be addressed.

People with disability experience disadvantage across all housing indicators, including homelessness, poor-quality housing and housing unaffordability.⁸ Among disability types, people with intellectual or psychosocial disability fare the worst.⁹ While around 6 per cent of National Disability Insurance Scheme (NDIS) participants will receive funding for ‘specialist disability accommodation’, the Scheme does not fund or contribute to the cost of accommodation for the vast majority of NDIS participants.

For those people ineligible for housing support through the NDIS, the low rates of Newstart and Disability Support Pensions impose significant barriers on accessing private rental markets. For example, Anglicare’s 2019 rental affordability snapshot, found that only 2 per cent of rental properties in Metropolitan Melbourne were affordable for people on income support payments.¹⁰

CIJ’s engagement with people with lived experience throughout the Enabling Justice and Supporting Justice projects has found that many people with disability feel that they are “set up to fail” due to the lack of disability-specific services available, both within the justice system and in the broader community. Insecure housing has consistently been identified by many Supporting Justice project stakeholders, including people with lived experience, as a significant factor in cycles of offending and re-offending. Supporting people with disability to access secure housing would make a substantial difference in promoting their stability, facilitating long-term support and ultimately reducing recidivism.

An additional barrier for people leaving prison is the lack of Centrelink payments while someone is in custody, which removes the ability to save for the significant upfront costs associated with entering a private tenancy agreement and rebuilding a life in the community post-release. For people in custody longer than six months, they are almost certain to be issued a Notice to Vacate due to the Victorian Department of Health and Human Services (DHHS) Office of Housing policy which can mean losing long term housing and being released into transitional housing or homelessness on release.

In the Our Voices podcast series, the Voices for Change self-advocates articulated their own experience of the cycle between custody and homelessness. Michael Mayne’s experience demonstrates the need for

⁷ The full transcript of the Our Voices podcast series is included as an annexure to this Submission.

⁸ Aitken et al, *Precariously placed: housing affordability, quality and satisfaction of Australians with disabilities*, *Disability & Society*, 34(1): 121-142.

⁹ 19.1% of people with intellectual disability and 17.3% of people with psychosocial disability lived in unaffordable housing, compared to 7.6% of people without disability, and as at 2011, 18.4% of people with intellectual disability lived in social housing, compared to 1.5% of people without disability: Aitken et al, *Precariously placed: housing affordability, quality and satisfaction of Australians with disabilities*, *Disability & Society*, 34(1): 121-142.

¹⁰ Anglicare Victoria, *Rental Affordability: 2019 Victoria Snapshot* (2019), 2.



adequate post-release support, including safe and long-term housing, to mitigate the risks of falling back into patterns of reoffending.

“With the housing, what we want, what I think we’ve all been in a situation, what we want the Commission to know is when you’re coming off parole... you need an address. Well how can you get an address when you’re in jail. There are some avenues but there’s nothing very much. Not much available. I was released a few times on parole to friends or family but that was only for a short term. Now I’m out there, the last time I was released from prison, they sent me to a place over in Richmond and it was good. I thought I don’t have to rely on family and friends because I put them through, it becomes a burden to the family and friends, as much as they love me and want to have me there. I went to this place in Richmond. It was good, had a roof over my head, somewhere I could call home.

Now, these people that got the place for me prior to getting out of jail are called Link Out, which I’m grateful to them, but in the end it turned out to be a place where, I’m a recovering addict, open my door, two foot away from my door I’ve got a heroin dealer and an ice dealer. Downstairs I’ve got an ice dealer and an alcoholic. Now I was stuck there. In the end, I virtually just left. I tried to get onto MPs about, the local MP about it. No-one got back to me and I got that frustrated, I even wrote, which I’ve still got at home, I’ve got a suicide note. I was going to, I was thinking about topping myself because I was sitting there in the dark at two in the morning and rocking, what am I going to do? I can’t sleep.

You’ve got the noise, the traffic. You’ve got people knocking on the door at two, three in the morning. I had a bloke, a Chinese bloke pull a knife on me about 30cm long one night. And obviously me being in jail, I just took it like a jail threat and said I’ll take it off you and I’ll stab you with it. Get out. But that’s sort of, some of the things that we have to put up with when we get released from prison. There’s no accommodation. I mean how many times has it happened to all of us where we’ve got nowhere to stay and we’re sleeping at friend’s places, on the couches.”

- Michael Mayne, Voices for Change

Michael’s experience can be contrasted to that of Graham, who was linked in with sustainable and long-term support through the NDIS. Graham became a participant in the Scheme through a pre-existing relationship with his disability service provider Arbias. His plan provides access to specialised supported accommodation which has helped him find stability and ultimately stay out of the criminal justice system.

“The NDIS was the best thing for me. That the government was saying to me, Graham, you can do this, don’t disappear with it, and that’s what I’m going to keep doing. This is the fifth year from NDIS for me and I’m going to keep doing it. Give me a place. That’s why Arbias has helped me. And the unit that I am, there’s 16 units. There’s five of us there that are just ABI people. So here I am in the middle of everyone and that’s where Arbias helped me.”

- Graham, Voices for Change

The contrasting experiences of Graham and Michael demonstrate the transformative potential of pre- and post-release planning and support from disability support agencies to achieve sustainable support outcomes for people with complex needs in contact with the criminal justice system. Their experience also highlights the importance of stable, safe and long-term housing to achieving success for people leaving prison looking to stay out of the criminal justice system.



Recommendation 5

That all Australian Governments ensure much earlier and increased access to integrated housing supports (including legal, social work and financial counselling support) for people with disability who have been sentenced or remanded in custody, to ensure that no person is ever released from custody to homelessness.

Recommendation 6

That all Australian Governments support greater investment in increasing social housing stock to decrease wait times for social housing properties and transfers. Housing agencies should make available a larger number of properties to community support organisations, accessible to people with disability being released from prison who may not be eligible for housing support through their NDIS support package.

Recommendation 7

That all Australian Governments utilise all available economic levers to address the housing affordability crisis.

Recommendation 8

That the Commonwealth Government urgently raise the Newstart and Disability Support Pension payment rates.

Recommendation 9

That all Australian Governments ensure that prisoners who have had their Disability Support Pension or Newstart allowance suspended or cancelled because they are in prison are provided with support prior to release have payments restored at the earliest opportunity as part of their discharge planning.

Recommendation 10

That the Victorian Department of Health and Human Services extend the period of absence allowed from a public tenancy from the current maximum of 6 months to a maximum of 12 months, with the ability for discretion to be applied.

Recommendation 11

That State and Commonwealth Governments coordinate to ensure that people with disability in custody have their support needs recognised and have access to pre- and post-release planning focused on accessing sustainable NDIS supports and secure housing in the community.



Disability and Trauma Awareness

“Looking back, but I’ve always known, no, nobody, nobody ever asked questions. Like when I presented with swollen black eyes, however I presented, I wasn’t asked questions about head injuries or being choked or losing consciousness, the sorts of questions that might indicate that there’s potential damage to my brain. I wasn’t asked questions like that. And I’ve thought a lot over time about that and I, I’m not going to go into what it felt like to be that person presenting that way, but I can certainly, I can appreciate how difficult it is to see somebody that way, like to acknowledge it or not to acknowledge it. It’s very difficult to look at somebody who has experienced violence. It’s very difficult.”

- Dorothy Armstrong, Voices for Change

In the criminal justice system, the onus to identify and advocate for disability supports is often placed on the individual with disability. People with disability are frequently not offered or asked what supports and adjustments they need; they may also not be aware of their entitlement to supports or know what supports might be available.¹¹ Furthermore, some people who would benefit from supports do not identify as having a disability, while others are unable to communicate their disability status; in fact, some disabilities such as neurological disability are frequently undiagnosed.¹²

This approach can lead to many people electing to conceal their disability in custodial environments where there is a perceived risk of exposing vulnerability and a reluctance among prisoners to ask for help. Low levels of disability awareness among criminal justice system workers, such as lawyers, judicial officers, correctional and court staff, mean that opportunities to provide reasonable adjustments that can promote participation in programs and pathways out of cycles of offending are often missed. This is particularly the case for those ‘hidden disabilities’, such as acquired brain injury, autism spectrum disorder, ADHD and mild intellectual disability.

In the Our Voices podcast series, Kevin Maloney explains how he had served over 15 years imprisonment before his dual disability was recognised. As a result of this recognition, Kevin was linked in with the NDIS and now has a NDIS support plan that provides for 24-hour care. Since being released and having access to this support, Kevin is experiencing his longest continuous period in the community since he was a teenager. Kevin’s experience of his disability being unrecognised is also shared by Dorothy and Michael, both of whom shared a number of risk factors associated with having an acquired brain injury, but did not have their disability recognised while they were in the justice system.

“Yeah, once I was released and had nowhere to go, so I went straight back on the streets and straight back into drugs. Yeah, that’s all I knew. Christmas was my first one out for a while. Currently with NDIS, I have a package with them. I have 24-hour care. Never had it before obviously but this has obviously helped me. It’s the longest I’ve been out of prison. Yeah, before I had my NDIS package, I had no-one. When I didn’t have NDIS, I was out doing crime and all that to survive. They said to my mum that Kevin would fit into this program, this NDIS package. So we put the paperwork in and we waited and yeah.”

- Kevin Maloney, Voices for Change

¹¹ Australian Human Rights Commission, *Equal before the law* (2014) 24.

¹² See for example, Bower C, Watkins RE, Mutch RC, et al. Fetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia. *BMJ Open* 2018, 1.



Recommendation 12

That all people who work within the criminal justice system be educated about the circumstances and needs of people with disability so they are able to recognise people with disability and respond to their support needs appropriately. Additionally, in recognition of the large number of people with support needs in contact with the criminal justice system, people who work within the criminal justice system must adopt a precautionary approach towards all people in contact with the system.

Recommendation 13

That a common screening tool be designed which workers across the criminal justice system can be trained to use for the purpose of identifying a person with a suspected cognitive disability until a neuropsychological assessment is available, so that a person's needs are recognised and access to appropriate support and programs are offered at the earliest opportunity.

Recommendation 14

That people in the criminal justice system, including lawyers, court support staff and correctional officers, receive training on understanding the NDIS and how to support people access their entitlements through the Scheme.

Police

The Victorian Equal Opportunity Commission's 2014 *Beyond Doubt Report* details the many ways in which a person with disability can experience barriers to access to justice in their interactions with police.¹³ It recognises that significant work needs to be done to improve disability awareness and ensure that police interactions are accessible for every person with disability.

Women with disability are more likely than their peers to experience family and sexual violence.¹⁴ People with disability are also vulnerable where their carer is also their abuser. The link between family violence and ABI has been recognised by the Victorian Royal Commission into Family Violence¹⁵ and the Enabling Justice Project.¹⁶ However, there is still much work to do to raise awareness of the practical consequences for victim survivors of family violence, and the changes to service system responses and legal practice required to better support them.

In the Our Voices Podcast series, Dorothy Armstrong speaks powerfully of her experience of the criminal justice system and her struggles to have her support needs recognised by police, lawyers and courts. Dorothy's experience highlights the disconnect that can occur in service systems in getting appropriate supports to people who have experienced violence before they spiral into crisis and find themselves in the criminal justice system.


"I feel really blessed because I've always been able to see and understand that there was never enough time, that the solicitors were completely overloaded with clients and that all these protocols had to be met. And I always understood that but it didn't take away, it didn't take away the pain and whatever else I was feeling, the reality of these situations. It was always really frightening, you know, that people were making decisions about my life and having real major long-term effects on my life, and there were really no, nobody saw fit to

¹³ Victorian Equal Opportunity and Human Rights Commission, *Beyond Doubt: the experiences of people with disabilities reporting crime* (2014).

¹⁴ *Ibid*, 29.

¹⁵ Victorian Royal Commission into Family Violence, Recommendation 171.

¹⁶ Enabling Justice Report, 62.



have conversations with me about it. Nobody involved me and it was just me. It was me trying to do everything. Trying to connect myself to services, trying to get help for myself, trying.”

- Dorothy Armstrong, Voices for Change

The CIJ is aware of work being undertaken within the Victorian Government that has the capacity to respond to this breakdown in support systems for victim survivors of family violence with disability. The CIJ worked with the Victorian Department of Justice and Community Safety in 2019 on a review of the Victorian Victims Services system, exploring ways that the system can better respond to victims of crime to ensure they do not fall between service gaps. The CIJ is also aware, although not involved with, concurrent work within the Victorian Government through the Common Clients project between the Department of Health and Human Services and the Department of Justice and Community Safety which we understand is looking at better ways to respond to people with complex support needs, including disability and acquired brain injury, who first present through family violence and child protection systems and later become involved in the justice system.

“(T)hey took advantage of the way that I was looking and feeling and yeah. And I went to prison and got sentenced to prison for stuff that I hadn’t done, which made me feel not accepted and not good enough, not worthy and that carried on for years. A lot of resentment, fear and is it going to happen again. It was just ongoing.”

- John Tjepkema, Voices for Change

For people with disability who have contact with police as a person accused of crime, there are significant power dynamics at play. The lack of understanding in the community about disability generally and cognitive disability in particular can lead to some people with disability being more likely to attract the attention of police.¹⁷ Some of the behavioural manifestation of disabilities such as ABI can also be misinterpreted as wilful, difficult, or anti-social, leading to criminalisation of their disability.¹⁸

Many people with disability may not have their rights and obligations explained to them in ways which they can understand, and might also be particularly susceptible to answering questions in the way which they hope will please an authority figure.¹⁹ A lack of recognition of disability by police can mean that there is no access given to safeguards designed to protect people with cognitive disability (such as Independent Third Person schemes or justice advocacy services).

Recent work by Victoria Police, in partnership with Scope Australia, to seek Communications Access Symbol accreditation at the Box Hill Police Station is an encouraging start to improve access to justice for people with communication support needs.²⁰ A broader roll-out of this scheme across all police stations, courts and tribunals would be a significant step toward creating a more accessible justice system.

Recommendation 15

That Australian criminal justice system agencies, including police, courts and tribunals, be required to apply for the Communications Access Symbol accreditation.

¹⁷ Australian Institute of Criminology, *Aboriginal prisoners with cognitive impairment* (2017), 2.

¹⁸ McSherry B, Baldry E, Arstein-Kerslake A, Gooding P, McCausland R and Arabena K, (2017). *Unfitness to Plead and Indefinite Detention of Persons with Cognitive Disabilities*, Melbourne: Melbourne Social Equity Institute, University of Melbourne, 10.

¹⁹ Spivak, B and Thomas, S, ‘Police contact with people with an intellectual disability: The Independent Third Person perspective’ (2013) 57(7) *Journal of Intellectual Disability Research*, 635, 636.

²⁰ See for example: <https://www.police.vic.gov.au/australian-first-police-station-awarded-communicationaccess-symbol>



Recommendation 16

That Victoria Police's work to implement recommendation 5 of the 'Beyond Doubt' report to improve communication and translation of documents into Easy English be extended to benefit defendants and suspects, not just witnesses and victims of crime.

Recommendation 17

That all jurisdictions commit to undertaking research into the prevalence of ABI and disability among victims and perpetrators of family violence, and require the research to be user-centred and to include the identification of the particular support needs of victims and perpetrators of family violence who live with disability.

Recommendation 18

That staff in family violence support services receive training about disability, as well as ABI, and its links with family violence, including training to conduct routine disability screening. Information on disability support needs or the need for further assessment and support be recorded on family violence risk assessment tools and associated information sharing platforms.

Court

When people cannot understand what is occurring during a court process, or feel that the process is not designed to involve them in a meaningful way, the capacity for the system to deliver fair and effective justice is compromised. Procedural justice theory suggests that if people feel they have been treated fairly and respectfully, they are more likely to comply with the law and regard it as legitimate.²¹ Research has linked the approach to hearings and process used in solution-focused courts, which adopt procedural justice principles, to success in promoting access to justice for people with disability.²²

The Assessment and Referral Court (ARC), which was established at Melbourne Magistrates' Court in 2010 to provide a therapeutic response to accused persons with mental illness, cognitive and/or neurological disability, is an example of a disability focused problem-solving court. Through the provision of clinical assessment, support and referral services, in addition to regular monitoring from the same Magistrate, the ARC currently fills a substantial gap in the disability service landscape for people with disability who have interactions with the Victorian criminal justice system. The model is currently only available in limited Courts having recently been extended to operate at five Magistrates' Courts across Victoria.²³

Recommendation 19

That solution-focused courts, such as the Victorian Assessment and Referral Court model, be expanded across all of Australia's criminal law jurisdictions. Until this is possible, at every court, introduce the two key elements of solution-focused courts: judicial monitoring (via the use of part heard lists, informal seating arrangements) and court support services, and that government seek to appoint judicial officers and Magistrates who demonstrate a commitment to therapeutic justice.

²¹ See for example, Tyler, T.R. 1990. *Why People Obey the Law*. Yale University Press New Haven: London; Frazer, M.S. 2006. *The Impact of the Community Court Model on Defendant Perceptions of Fairness: A Case Study at the Red Hook Community Justice Center*. New York, NY: Center for Court Innovation.

²² Liz Richardson, 'Mental health courts: Providing access to justice for people with mental illness and cognitive impairments' (2019) 44(2) *Alternative Law Journal* 100, 106.

²³ Frankston, Latrobe, Korumburra, Melbourne and Moorabbin: <https://www.mcv.vic.gov.au/about-us/assessment-and-referral-court-arc>



Prison

Established sentencing principles recognise that imprisonment may be particularly onerous for people with disability. While in custody, people with disability often lose access to their support networks, and they may be more vulnerable to victimisation while in custody.²⁴ In Victoria, despite recent improved capacity with the Ravenhall Correctional Centre, there remains an insufficient number of specialist prison units or facilities to cater to the volume of prisoners with disability. Of particular concern, is the situation for people with neurological disability who are subject to indefinite detention in inappropriate settings around Australia after being found unfit to be tried or not guilty due to mental impairment.²⁵ In Victoria for example, admission to residential treatment facilities such as the Victorian Disability Forensic Accommodation and Treatment Service (DFATS) is limited to people with intellectual disability and people without a treatable mental illness are considered inappropriate for admission to Thomas Embling Hospital.

Many prisoners with disability do not receive the support, adjustments and aids they need to meet their basic human needs, participate in prison life and reduce their risk of reoffending.²⁶ Most prisoners with disability are reliant on custodial staff to meet their needs, who are not trained or well-suited to this role. Being inadequately supported in such an environment can lead to high levels of distress and behaviours which, if not understood or appropriately addressed, may in turn lead to seclusion, restraints or other inhuman and degrading treatment to manage or respond to disability.²⁷ While prisoners with a diagnosed intellectual disability may be assisted by a Corrections Independent Support Officer at their disciplinary hearing, prisoners with a suspected but unconfirmed intellectual disability, or with another cognitive or neurological disability, are not eligible to access this support.²⁸

In addition, the lack of access to appropriate adjustments and communication support for people with disability has the effect of limiting access to programs necessary for parole, rehabilitation or full participation in prison life leading to prolonged detention, poor post-release outcomes and social isolation.²⁹

Loneliness. Loneliness is something that a person doesn't know. When the person does know, they know what loneliness is. I've been by myself for a long, long, long time. Even in jail, I turned myself around every day because that's me. And here I am with Voice of Justice. That changed my loneliness. I can actually go to a group now, have a smoke with each other, have a coffee and talk about things. That's something that I've never done for a long, long, long time.

- Graham, Voices for Change

Recommendation 20

That the recommendations made by the Senate Community Affairs References Committee in *Indefinite detention of people with cognitive and psychiatric impairment in Australia (2016)* be implemented.

²⁴ Human Rights Watch, *'I needed help, instead I was punished': Abuse and neglect of prisoners with disabilities in Australia*, 2018.

²⁵ See for example, Senate Community Affairs References Committee, *Indefinite detention of people with cognitive and psychiatric impairment in Australia (2016)*.

²⁶ Australian Human Rights Commission, *Equal before the law*, 2014, 8.

²⁷ *Ibid*, 28, 30; see also Victorian Ombudsman, *Investigation into a woman found unfit to stand trial (2018)*; Human Rights Watch, *'I needed help, instead I was punished': Abuse and neglect of prisoners with disabilities in Australia*, 2018.

²⁸ 'A CISO actively participates in the disciplinary hearings process by: explaining to the prisoner what their rights are at a prison disciplinary hearing, judging whether the prisoner understands their rights and can freely exercise them before the hearing can commence [and] facilitating communication and supporting the prisoner through the hearing process': <https://www.publicadvocate.vic.gov.au/volunteering/corrections-independent-support-officers>

²⁹ AHRC, *Equal before the law*, 29.



Recommendation 21

That all Australian governments:

- invest in training correctional staff to use therapeutic and restorative approaches when dealing with prisoners;
- increase staffing levels to minimise the need to use punitive practices, such as isolation and restraint; and
- invest in the Positive Behaviour Support (PBS) framework to manage behaviour of concern in people with disability in prison.

Living with trauma, a criminal record and disability

I went through that feeling, my kids too, they'd be better off with someone else. I went through that for a long time because I wasn't happy in myself. I didn't feel a part of, accepted. I felt like every time I got out of prison, this is before I was a parent, I had this big sign on my head, I just got out of jail. But I'm just a human being walking down the street but it's how I felt in myself. And I've been out of prison a long time. I still have that. I still have that but I learned by doing things different. I used to, in a real big way, feel that in the community. But now it's only a little bit but it's always there. It's always there. I'm different. But you know, the bottom line is, a lot of self-forgiveness and forgiving others and letting go and accepting things how they are today. But if that never happened in the past, well I wouldn't be feeling this way as I am today, but I had to learn to try and let go. If I had a lot more supports, maybe I wouldn't be the way I am. I like who I am, but I'm scarred. I'm still scarred from my prison and police experiences. I think I'll die with that.

- John Tjepkema, Voices for Change

Throughout the Our Voices Podcast series, the Voices for Change self-advocates describe the long-term impacts of trauma sustained from their time in the justice system, having criminal records and their experiences of disability and gender discrimination. Their experiences demonstrate the need for more trauma informed practice approaches across the criminal justice system, as well as greater understanding and trauma awareness in disability service providers working with people with disability who have experienced the justice system.

Criminal record discrimination adds a further layer of disadvantage for people with disability exiting the criminal justice system. It can have the effect of reducing the already limited opportunities for employment for people with disability and result in the ineligibility for some support programs and services. Woor Dungin's Criminal Record Discrimination project examined the various ways in which a criminal record can hold a person back who has long since left the criminal justice system and sets out the particular impact that criminal records have on Aboriginal and Torres Strait Islander people.³⁰

Lived experience informing policy change

The CIJ has benefited from an ongoing dialogue with people with disability and lived experience of the criminal justice system. The benefit of genuinely engaging the expertise of people with lived experience has been recognised by the Victorian Royal Commission into the Mental Health System.³¹ The recent *Change from Within* report from the United Kingdom based Criminal Justice alliance outlines the significant benefits of including lived experience in the criminal justice workforce and policy development.³²

Despite these recent developments, the insights and expertise of people with lived experience of the justice system are too often overlooked in designing programs and solutions to address issues of abuse and neglect

³⁰ Woor Dungin, [Criminal Record Discrimination Project: Submission to the Aboriginal Justice Forum 49 \(2017\)](#).

³¹ Royal Commission into Victoria's Mental Health System, *Interim Report* (2019), 387, 410.

³² Criminal Justice Alliance, *Change from Within: Insights from people with lived experience working to improve the criminal justice system* (2019).



within the system. This is particularly the case for people with disability who have lived experience of the criminal justice system.

“For most of my journey... I’ve sort of been by myself. Now with Voices for Change, what a wonderful thing to have a group of people who are genuine, passionate, motivated, funny, but the perfect people to be sharing with others their experiences of the criminal justice system and living with disability, and how to do things differently for other people.”

- Dorothy Armstrong

Recommendation 22

That all programs, services and organisations that form part of the criminal justice system, should be designed with a human-centred approach, drawing on the expertise of people with lived experience to enhance access to justice and procedural justice for all who have contact with it.

System Collaboration and Information Sharing

A consistent finding of the Supporting Justice project’s consultation with system stakeholders, is that there is poor coordination and information sharing between the mental health and disability services, police, corrections and courts. As a consequence, compounded by the lack of disability and trauma awareness among justice system staff, people with disability are exposed to situations of abuse and discrimination in the criminal justice system. This contributes to cycles of contact in a system that does not recognise disability support needs or address the underlying factors contributing to offending patterns and behaviours.

Supporting people on remand

The lack of communication and information sharing between Victorian government agencies, including police, corrections, courts, health and statutory organisations such as the Victorian Transport Accident Commission (TAC) had tragic outcomes in the death in custody of Darren Brandon.³³ Mr Brandon committed suicide after being remanded to Melbourne’s Metropolitan Assessment Prison following an unsuccessful and unrepresented application for bail. He had an acquired brain injury, a history of self-harm and had never previously been in jail before. The Coroner was critical of the failure of multiple agencies to share information about Mr Brandon’s disability support needs, concluding that ‘Darren’s death was preventable, on the balance of probabilities, had there been better information sharing between the interested institutional parties involved.’³⁴

People with disability, and those with dual diagnoses in particular, experience degrading and abusive responses in police custody. An example of this is the refusal of medication for remandees with mental ill-health leading to a rapid decline which was related by both Kevin and John in the Our Voices podcast (see excerpts below). These refusals are symptomatic of the lack of disability awareness, trauma informed practices and poor information sharing between agencies to the detriment of people with complex needs on remand.

“I don’t think it’s fair when you go to prison, you’re taken off your medication and stuff. It happened to me a few times. I’ve gone to custody and not been given my medication, so then you fall ill and you end up in AAU. It’s a psych unit within the Melbourne Assessment Prison. When you get arrested, you go to the police cells. You can wait there up to 28 days, then they remove you onto the map, where they try and sort your medication out. Yeah, it’s hell. When I went to the AAU once, I wasn’t on medication and I felt very sick. I slept under the bench for three months. I thought I was getting poisoned by the water. They don’t

³³ *Inquest into the death of Darren Brandon* (2018) COR 2018 2778.

³⁴ *Ibid*, [155].



understand it at the prison, the mental health. They don't understand the importance of taking your medication. The most important thing, biggest thing for me is medication in prisons. What needs to change in the prison population is that medication and ABIs need to be more recognised so people aren't suffering."

- Kevin Maloney, Voices for Change

"You know, within the prison system and police cells especially, I was just a number thrown in the cell. Well, the jails can take care of him. I've been on medication and stuff and then get arrested and put in the cells. I asked them for my medication or anything like that. And then I'm spinning out because I'm not feeling right again, even less. I was horrible and becoming a bit psychotic. I'm spinning out and calling out for help and I ended up as a spastic in the cells. I had my neck go all stiff and my hands cramp up and my left foot turned in. I was dragging it. Yeah, it was, eventually I was given an injection in the bum and it made me come good again. Eventually. But I've had experiences in the cells that, I'm asking for help because I don't feel well and I'm getting no help. And then I'm losing it because I'm not feeling well and next thing you know, I'm getting more charges and it's because of my behaviour. Because I wasn't right in my mind, in my body."

- John Tjepkema, Voices for Change

John and Kevin's experiences, highlight the need for better care in custody for people with mental health and disability support needs on remand. The need to protect the inherent dignity of a person and their ability to control information about their health should be taken into account when designing information sharing tools in the criminal justice system, particularly given the low levels of trust that the institutions involved have from people moving through the system.³⁵ It is important to recognise too that information sharing in the absence of disability and trauma awareness will not benefit people with disability. The Voices for Change self-advocates repeat concerns raised by the Enabling Justice project's Justice User Group, that disclosing disability is no use if the staff in the criminal justice system do not understand the impact of disability, or there were no additional resources or support available to follow up the disclosure.³⁶

Recommendation 23

That all State governments review laws, procedure and practices in police and prison settings regarding the reception of new prisoners to ensure that people have access to their medications, medical care and have their disability support needs recognised and responded to at the earliest opportunity.

Recommendation 24

That all Australian Governments introduce an information sharing regime for the criminal justice system, that has the capacity to record a person's needs, diagnoses, and their support professionals where the sharing of that information is for the purpose of benefiting that person and that person provides their fully informed consent. Such a regime should enable sharing of health information between agencies, including non-government community support organisations who support offenders, so that information follows an individual through their entire experience with the criminal justice system.

³⁵ Enabling Justice Report, 68.

³⁶ Ibid, 70.



The NDIS-Justice interface

The ongoing lack of clarity about the interface between the NDIS and the justice system is limiting the implementation of disability supports for people in the criminal justice system, particularly in prison. The NDIS is responsible for funding all reasonable and necessary supports for people subject to the justice system who are not in custody on the same basis as other people.³⁷ For people in custody, the NDIS will fund reasonable and necessary supports ‘to the extent appropriate in the circumstances of the person’s custody’,³⁸ along with transition supports.³⁹

In considering what is reasonable, the NDIS will not fund supports which other government services are expected to provide. According to the interface principles agreed by COAG, the justice system remains responsible for mainstream justice services and must make reasonable accommodations to ensure those services are accessible to people with disability and the NDIS is responsible for providing all reasonable and necessary supports to people with disability in the justice system, including those in prison or getting ready to transition out of prison, where those supports relate to the person’s disability.⁴⁰ This means that prisoners who are (eligible to be) NDIS participants should be able to receive disability-specific assistance and capacity-building supports in prison, including supports to transition to the community, however this rarely happens in practice.⁴¹

The introduction of NDIA Justice Liaison Officers to assist State Correctional Services to address issues with the justice-NDIS interface is a positive step towards resolving the challenges in the roll-out of the scheme. However, the experience in Victoria has been that these Officers have a limited scope to build capacity among Correctional staff and not in facilitating access or problem solving for individual prisoners with disability experiencing difficulties accessing their entitlements under the Scheme. More work is needed to ensure that people in custody are supported to access their entitlements through the NDIS. Urgently needed improvements include:

- improving the screening and assessment process for people with disability on reception to custody;
- connecting those eligible for the NDIS with support to access the scheme while in prison and to prepare for post-release; and
- funding and providing access to disability advocacy organisations to support people with disability in custody access their full entitlements through the NDIS and under State and Commonwealth disability, human rights and anti-discrimination legislation.

Recommendation 25

That all Australian Governments provide funding to both disability advocacy and legal services to assist people with disability and complex needs in contact with the criminal justice system—especially those in prison—to access the NDIS.

Recommendation 26

That the *Principles to Determine the Responsibilities of the NDIS and Other Service Systems* should be reviewed to ensure they provide clear guidance to resolve justice interface questions.

³⁷ NDIS (Support for Participants) Rules 2013 r 7.24(a).

³⁸ NDIS (Support for Participants) Rules 2013 r 7.24(b)(i).

³⁹ NDIS (Support for Participants) Rules 2013 r 7.24(b)(iii).

⁴⁰ *Bilateral Agreement between the Commonwealth and Victoria: Transition to a National Disability Insurance Scheme*, sch I: Arrangements for the Interface between the NDIS and Mainstream Services in Transition, attachment A: Principles to Determine the Responsibilities of the NDIS and Other Service Systems (November 2015), 24. See also *National Disability Insurance Scheme (Support for Participants) Rules 2013* (Cth) rr 7.23-7.25.

⁴¹ Office of the Public Advocate, *The illusion of choice and control* (2018), 18; see also Victorian Ombudsman, *Investigation into a woman found unfit to stand trial* (2018).



Recommendation 27

That all Australian Governments develop a Disability Justice Strategy, as proposed in the Australian Human Rights Commission 2014 Report, *Equal Before the Law*.

Recommendation 28

That the State and Commonwealth Governments continue to provide, and increase the provision of, easily accessible community support and disability advocacy services that seek to enhance social inclusion and provide connection to health and other services for individuals with disability and complex needs. This should include funding for the establishment and facilitation of peer support and advocacy networks that promote social inclusion and participation for people with disability and complex needs regardless of their NDIS status.

Recommendation 29

That the NDIA and State governments coordinate to ensure that people who are in prison are able to apply for, access and continue to receive their NDIS support package while in prison on an equal basis with people who are not in prison, making use of all registered NDIS service providers that work with people in prison. NDIS applications and support package planning should be fully integrated into post-release planning and support.

Early intervention

“(W)hen I first went to the boy’s home, I was there for riding motorbikes on the road and on a track without registration. I wasn’t a thief or anything like that. I didn’t steal things at that stage. But when you go there, you obviously meet other kids and your crimes get different and better and all that sort of, it gets worse.”

- Michael Mayne, Voices for Change

Children and young people

There is a recognised link between children and young people with disability, the out-of-home-care system, contact with police and the youth justice system.⁴² The link is starkly illustrated by our Supporting Justice System Map and led to many of our project’s stakeholders identifying the urgent need for more effective early intervention support for young people with disability to avoid pathways of criminalisation and entrenched disadvantage.

In Victoria, of the children and young people sentenced or on remand in 2015-2016, 24 per cent had ‘issues concerning their intellectual function’, 30 per cent presented with mental health issues and 11 per cent were registered with Disability Services.⁴³ However, stakeholders who work in the youth justice system have indicated that the rates of disability and cognitive impairment is likely to be much higher.⁴⁴ Recent Victorian inquiries into the youth justice system have found that the current level of existing mental health services for young offenders is insufficient for their needs.⁴⁵

⁴² Sentencing Advisory Council, *‘Crossover Kids’ Vulnerable Children in the Youth Justice System* (2019); Victoria Legal Aid, *Care not Custody Report: A new approach to keep kids in residential care out of the criminal justice system* (2016).

⁴³ *Victorian Parliamentary Inquiry into Youth Justice Services* (2018), 27.

⁴⁴ Ogloff and Armytage, *Youth Justice review and strategy: Part 1* (2017), 160.

⁴⁵ *Victorian Parliamentary Inquiry into Youth Justice Services* (2018), 96; Ogloff and Armytage, *Youth Justice review and strategy: Part 2* (2017), 123.



The Supporting Justice project is currently working with stakeholders in the youth justice sector to ensure young people who are in youth justice detention have pathways to access the NDIS and ongoing sustainable disability supports. There is a pressing need for better coordination between the NDIA and State Government administered youth crisis responses, including out-of-home care and justice system services; improved screening and assessment for young people in the Victorian youth justice system; and a focus on achieving sustainable disability supports for eligible young people through the NDIS.

A further area of reform that is currently being considered is the need to raise the age of criminal responsibility in Australia. Currently, the age of criminal responsibility is 10 years of age – significantly lower than comparable jurisdictions. The current age of criminal responsibility is inconsistent with the evidence on adolescent brain development and cognition.⁴⁶ It also has the effect of criminalising young people with neurodevelopmental disabilities, removing young people from education and disability supports and placing them in circumstances where they are vulnerable to abuse.

The recently released *PIPA Report: Positive Interventions for Perpetrators of Adolescent Violence in the Home (AVITH)*, found high levels of disability, and autism spectrum disorder in particular, in case reviews of family violence orders made involving adolescent perpetrators.⁴⁷ More research is needed to understand ways to respond to the needs of people with disability, particularly those with autism spectrum disorder, who use violence in the home. More education for police and family violence services on supporting young people and families to access specialist disability support is an early and necessary step to respond to this overrepresentation and to prevent these young people from being drawn deeper into the criminal justice system.

Recommendation 30

That all Australian Governments raise the age of legal responsibility to at least 14 years of age.

Recommendation 31

That all Australian Governments ensure that funding is provided for comprehensive assessment for young people in out-of-home care and in contact with the criminal justice system to support access to the NDIS.

Recommendation 32

That all Australian Governments implement the recommendations of the *PIPA Report: Positive Interventions for Perpetrators of Adolescent Violence in the Home*, including undertaking more research into the prevalence and disability support needs of young people with disability who use violence in the home.

Diversion pathways for people with disability

Although Victoria benefits from the Assessment and Referral Court list for eligible matters in some court catchment areas, there is no specific diversion program for people with disability over the age of 18.

We support the development of specific diversion programs for people with disability that are focused on addressing the underlying factors that are contributing to contact with the criminal justice system. These might include lack of access to the NDIS or inadequate or underutilised plans, behaviour support and housing programs. The CIJ is aware of diversion pilots for people with cognitive disability being trialled by the

⁴⁶ Sentencing Advisory Council, *Sentencing Children and Young People in Victoria* (2012), 11.

⁴⁷ Campbell et al., *The PIPA Project: Positive interventions for perpetrators of adolescent violence in the home (AVITH)* (2020), 93.



Intellectual Disability Rights Service (IDRS) in NSW and supports the long-term funding of a similar project in every Australian jurisdiction.⁴⁸

Recommendation 33

That all Australian criminal jurisdictions ensure that funding is provided for the design and implementation of diversion pathways specific to people with disability across Australia's criminal law jurisdictions.

Justice advocacy for people with disability

Examples of advocacy and referral services for people with disability exist in some Australian States and Territories, that provide active support to defendants in criminal matters from the point of contact with police, through to their appearance at court. The Criminal Justice Support Network is a disability advocacy service of the Intellectual Disability Rights Service (NSW), which helps people with intellectual disability to understand and navigate the police and court systems and to access diversionary options. A 2017 cost-benefit analysis demonstrated that it generates a return of \$2.50 for every dollar invested, generating a net saving of at least \$1.2 million per annum.⁴⁹

One of the key recommendations of the Enabling Justice report was the consideration of a program like the NSW Justice Advocacy Service that supports people with disability in contact with the justice system for Victoria. Such a scheme would address the gaps in support for people with cognitive disability between first contact with police right through the court process. Such a scheme has the potential to ensure continuity of support through the criminal justice system. Justice advocacy can also play a diversionary role by linking people with disability with supports that can lead to pathways out of the criminal justice system.

Recommendation 34

That all Australian criminal jurisdictions provide funding for a criminal justice advocacy and support service which offers support to persons with a cognitive disability or complex needs at any point of their interaction with the criminal justice system, including police, courts, corrections and prison.

The Independent Third Person Scheme

“And then when I went on to learn that it was actually as the discretion of the police to let people know about this scheme, I was just completely gobsmacked and I still am. I really, I absolutely don't believe at all that police should have the discretion to disclose that kind of information. As with a lot of things in my life, I could only try to imagine what could have been different but I don't do that so much these days because it just sends me crazy and it really hurts and upsets me. After the fact, that all along, you know, that there was an agency and there was, there were people who were willing and able to come and be with me in a police station and I never knew about it because no police officer ever told me, that's wrong.”

- Dorothy Armstrong, Voices for Change

In Victoria, the Independent Third Person (ITP) program is well placed to intervene early in a person's contact with the criminal justice system and bridge the gap in the support and advocacy service system. The scheme, which is administered by the Office of the Public Advocate, provides volunteer independent third

⁴⁸ The Cognitive Impairment Diversion Program (CIDP) is a 2 year pilot program funded by the NSW governments NDIS transition fund. See: <https://idrs.org.au/what-we-do/cipd/>

⁴⁹ Reeve, R., McCausland, R., Dowse, L., & Trofimovs, J. *Economic Evaluation of Criminal Justice Support Network*. Sydney: Intellectual Disability Behaviour Support Program, UNSW Sydney, 1.



persons to support people with cognitive disability understand and exercise their rights during police interviews.

Rather than simply compensate for communication that should be more fair and accessible to begin with, an enhanced ITP program has the capacity to deliver a more responsive and professionalised ITP program. This could include the ITP program enhancing training to its volunteers, so that they would be competent to make appropriate referrals, identify options for bail and recommend that participants are referred into solution focused court lists and/or court support programs. The ITP program in Victoria is currently underfunded. Its structure, resourcing and opportunities for expansion should be reviewed, and similar programs to the enhanced ITP or IDRS advocacy program be adopted in all States and Territories.

As part of its focus on identifying early intervention opportunities to reduce the overrepresentation of people with disability in the justice system, the Supporting Justice project has advocated for the enhancement and expansion of Victoria's Independent Third Person Scheme to fill the gap between police charge and first appearance at court, and potentially, to remain in place through the court process.

An expanded ITP that adopts a universal vulnerability approach in police settings would stay attuned to the possibility of a person having particular needs, and would be open to asking that person to identify their needs, rather than being focused on a particular diagnosis. Where people are able to access it, the ITP program clearly has value in improving communication and process in a police setting.

Recommendation 35

That all Australian Governments legislate for and properly resource Independent Third Persons (ITP) programs. That this should include a requirement for an independent person to be present when police interview a person with cognitive impairment or mental illness, irrespective of age and whether they are an alleged offender, victim or witness.

That these programs be resourced to provide support to people with disability in the criminal justice system from first police contact through the court/tribunal process, including the provision of referrals to police and support agencies.

Group homes

Conflict between co-residents in some forms of disability accommodation is a significant issue, and one where there are currently limited responses available to accommodation providers and police. Where a police response to conflict is the only option, this can result in early and unnecessary contact with the criminal justice system for people with disability. Conflict resolution may be a more appropriate early response where inappropriate placements result in non-criminal manifestations of conflict between residents.

The CIJ's Open Circle is a restorative justice service and constancy. In conjunction with the Supporting Justice project, it is currently developing a restorative engagement process to respond to conflict between co-residents in group homes with Yooralla. Open Circle intends to provide Restorative Justice conferencing as an approach to addressing conflict in this difficult area in appropriate cases. It is also hoped that the provision of an alternative response will also ensure that appropriate responses are provided to criminal conduct, which are sometimes downplayed as 'incidents' between residents and not treated as criminal offences when they involve people with disability.

Restorative justice processes bring all affected parties together, recognise the harm done and take a problem-solving approach to repairing the harm and addressing the violence. In this context, it is hoped that restorative justice can return choice and control to residents in group homes and reduce the harm and incidences of criminalisation associated with unnecessarily involving police in all responses to conflict.



Recommendation 36

That the Royal Commission explore alternative responses to conflict and relational harm for people with disability living in group settings, including restorative justice approaches, that respond to the needs of people harmed and reduces the early and inappropriate involvement of police and the justice system in responding to non-criminal conduct.



Summary of Recommendations

Recommendation 1

That all Australian Governments and key stakeholders across Australia acknowledge the need to increase recognition, respect and support for people with Acquired Brain Injury (ABI) in the criminal justice system and improve access to justice for people with ABI in Australia.

Recommendation 2

That the Commonwealth and Victorian Governments review and implement the recommendations made in the report Recognition Respect and Support: Enabling Justice for people with an Acquired Brain Injury.

Recommendation 3

That the Commonwealth Department of Social Services and Attorney General's Department provide funding to develop a national online resource to support court and legal professionals and people with disability navigate the justice system and make available disability supports to improve outcomes for people with disability.

Recommendation 4

That all Australian Governments and criminal justice system organisations invest and engage with criminal justice self-advocacy groups, properly fund capacity-building organisations like the Self-Advocacy Resource Unit in Victoria and explore ways of increasing opportunities of self-advocates to contribute to justice reform processes that affect them.

Recommendation 5

That all Australian Governments ensure much earlier and increased access to integrated housing supports (including legal, social work and financial counselling support) for people with disability who have been sentenced or remanded in custody, and to ensure that no person is ever released from custody to homelessness.

Recommendation 6

That all Australian Governments support greater investment in increasing social housing stock to decrease wait times for social housing properties and transfers. Housing agencies should make available a larger number of properties to community support organisations, accessible to people with disability being released from prison who may not be eligible for housing support through their NDIS support package.

Recommendation 7

That all Australian Governments utilise all available economic levers to address the housing affordability crisis.



Recommendation 8

That the Commonwealth Government urgently raise the Newstart and Disability Support Pension payment rates.

Recommendation 9

That all Australian Governments ensure that prisoners who have had their Disability Support Pension or Newstart allowance suspended or cancelled because they are in prison are provided with support prior to release have payments restored at the earliest opportunity as part of their discharge planning.

Recommendation 10

That the Victorian Department of Health and Human Services extend the period of absence allowed from a public tenancy from the current maximum of 6 months to a maximum of 12 months, with the ability for discretion to be applied.

Recommendation 11

That State and Commonwealth Governments coordinate to ensure that people with disability in custody have their support needs recognised and have access to pre- and post-release planning focused on accessing sustainable NDIS supports and secure housing in the community.

Recommendation 12

That all people who work within the criminal justice system be educated about the circumstances and needs of people with disability so they are able to recognise people with disability and respond to their support needs appropriately. Additionally, in recognition of the large number of people with support needs in contact with the criminal justice system, people who work within the criminal justice system must adopt a precautionary approach towards all people in contact with the system.

Recommendation 13

That a common screening tool be designed which workers across the criminal justice system can be trained to use for the purpose of identifying a person with a suspected cognitive disability until a neuropsychological assessment is available, so that a person's needs are recognised and access to appropriate support and programs are offered at the earliest opportunity.

Recommendation 14

That people in the criminal justice system, including lawyers, court support staff and correctional officers, receive training on understanding the NDIS and how to support people access their entitlements through the Scheme.

Recommendation 15

That Australian criminal justice system agencies, including police, courts and tribunals, be required to apply for the Communications Access Symbol accreditation.



Recommendation 16

That Victoria Police's work to implement recommendation 5 of the 'Beyond Doubt' report to improve communication and translation of documents into Easy English be extended to benefit defendants and suspects, not just witnesses and victims of crime.

Recommendation 17

That all jurisdictions commit to undertaking research into the prevalence of ABI and disability among victims and perpetrators of family violence, and require the research to be user-centred and to include the identification of the particular support needs of victims and perpetrators of family violence who live with disability.

Recommendation 18

That staff in family violence support services receive training about disability, including ABI, and its links with family violence. Including training to conduct routine disability screening. Information on disability support needs or the need for further assessment and support be recorded on family violence risk assessment tools and associated information sharing platforms.

Recommendation 19

That solution-focused courts, such as the Victorian Assessment and Referral Court model, be expanded across all of Australia's criminal law jurisdictions. Until this is possible, at every court, introduce the two key elements of solution-focused courts: judicial monitoring (via the use of part heard lists, informal seating arrangements) and court support services, and that government seek to appoint judicial officers and Magistrates who demonstrate a commitment to therapeutic justice.

Recommendation 20

That the recommendations made by the Senate Community Affairs References Committee in *Indefinite detention of people with cognitive and psychiatric impairment in Australia (2016)* be implemented.

Recommendation 21

That all Australian governments:

- invest in training correctional staff to use therapeutic and restorative approaches when dealing with prisoners;
- increase staffing levels to minimise the need to use punitive practices, such as isolation and restraint; and
- invest in the Positive Behaviour Support (PBS) framework to manage behaviour of concern in people with disability in prison.

Recommendation 22

That all programs, services and organisations that form part of the criminal justice system, should be designed with a human-centred approach, drawing on the expertise of people with lived experience to enhance access to justice and procedural justice for all who have contact with it.



Recommendation 23

That all State governments review laws, procedure and practices in police and prison settings regarding the reception of new prisoners to ensure that people have access to their medications, medical care and have their disability support needs recognised and responded to at the earliest opportunity.

Recommendation 24

That all Australian Governments introduce an information sharing regime for the criminal justice system, that has the capacity to record a person's needs, diagnoses, and their support professionals where the sharing of that information is for the purpose of benefiting that person and that person provides their fully informed consent. Such a regime should enable sharing of health information between agencies, including non-government community support organisations who support offenders, so that information follows an individual through their entire experience with the criminal justice system.

Recommendation 25

That all Australian Governments provide funding to both disability advocacy and legal services to assist people with disability and complex needs in contact with the criminal justice system—especially those in prison—to access the NDIS.

Recommendation 26

That the *Principles to Determine the Responsibilities of the NDIS and Other Service Systems* should be reviewed to ensure they provide clear guidance to resolve justice interface questions.

Recommendation 27

That all Australian Governments develop a Disability Justice Strategy, as proposed in the Australian Human Rights Commission 2014 Report, *Equal Before the Law*.

Recommendation 28

That the State and Commonwealth Governments continue to provide, and increase the provision of, easily accessible community support and disability advocacy services that seek to enhance social inclusion and provide connection to health and other services for individuals with disability and complex needs. This should include funding for the establishment and facilitation of peer support and advocacy networks that promote social inclusion and participation for people with disability and complex needs regardless of their NDIS status.

Recommendation 29

That the NDIA and State governments coordinate to ensure that people who are in prison are able to apply for, access and continue to receive their NDIS support package while in prison on an equal basis with people who are not in prison, making use of all registered NDIS service providers that work with people in prison. NDIS applications and support package planning should be fully integrated into post-release planning and support.



Recommendation 30

That all Australian Governments raise the age of legal responsibility to at least 14 years of age.

Recommendation 31

That all Australian Governments ensure that funding is provided for comprehensive assessment for young people in out-of-home care and in contact with the criminal justice system to support access to the NDIS.

Recommendation 32

That all Australian Governments implement the recommendations of the *PIPA Report: Positive Interventions for Perpetrators of Adolescent Violence in the Home*, including undertaking more research into the prevalence and disability support needs of young people with disability who use violence in the home.

Recommendation 33

That all Australian criminal jurisdictions ensure that funding is provided for the design and implementation of diversion pathways specific to people with disability across Australia's criminal law jurisdictions.

Recommendation 34

That all Australian criminal jurisdictions provide funding for a criminal justice advocacy and support service which offers support to persons with a cognitive disability or complex needs at any point of their interaction with the criminal justice system, including police, courts, corrections and prison.

Recommendation 35

That all Australian Governments legislate for and properly resource Independent Third Persons (ITP) programs. That this should include a requirement for an independent person to be present when police interview a person with cognitive impairment or mental illness, irrespective of age and whether they are an alleged offender, victim or witness.

That these programs be resourced to provide support to people with disability in the criminal justice system from first police contact through the court/tribunal process, including the provision of referrals to service and support agencies.

Recommendation 36

That the Royal Commission explore alternative responses to conflict and relational harm for people with disability living in group settings, including restorative justice approaches, that respond to the needs of people harmed and reduces the early and inappropriate involvement of police and the justice system in responding to non-criminal conduct.



Annexures

1. Enabling Justice report
2. System map
3. System map cloud
4. Podcast transcripts