

# Submission to the Review of the Victorian *Disability Act 2006*

20 October 2021

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## Introduction

The Centre for Innovative Justice at RMIT University (CIJ) welcomes the opportunity to provide a submission to the Review of the Victorian *Disability Act 2006* (the Act). This submission is a brief response to the Consultation Paper released on 21 September 2021.

This submission is informed by the ongoing work of the CIJ to address the overrepresentation of people with disability in the criminal justice system, drawing on the expertise of people with disability and lived experience of justice involvement.

The CIJ recognises that the second stage of the Review of the *Disability Act 2006* is aimed at tackling inequality and promoting inclusion, following the transition to the National Disability Insurance Scheme (NDIS).

This stage of the review of the Act is highly relevant to our work, and to the expertise of the people with disability and lived experience of justice involvement who work with us. This is because involvement in the justice system undermines attempts to reduce inequality and promote inclusion for people with disability. While the relationship between disability and involvement in the criminal justice system is a complex one, it is clear that involvement in the justice system, particularly for people with cognitive disability, leads to further inequality and exclusion while compounding disadvantage. If the Act is to meaningfully promote equality for people with disability, therefore, it must work to reduce this involvement, and promote equality for *all* people with disability, including those who have contact with the justice system.

In the context of this review, it is also important to acknowledge the challenges that arise for people with disability in the interface between the NDIS and the justice system. The challenges are significant and widespread. Many people with disability in the justice system, not only those who receive forensic disability services, receive support within the mainstream service system. The transition to the NDIS has left many people with disability within the justice system without appropriate support. Additionally, the transition has added to the complexity for people with justice involvement who are often also engaged in multiple and overlapping service systems, including housing, child protection and health services.

This review provides an important opportunity for the Victorian Government to take a lead in promoting and protecting the rights, dignity and needs of people with disability, including those who have been involved in the justice system by addressing these challenges. In CIJ's view the review of the Act should lead to the development of a legislative framework to drive the Victorian Public Sector to create accessible services for *all* people with disability, where those services respond to systemic barriers faced by people with disability and are informed by people with lived experience of disability and the systems that directly affect them.<sup>1</sup> This framework, properly implemented, should in turn promote the kind of longer-term change that will lead to equality and inclusion for all,

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<sup>1</sup> The *Gender Equality Act 2020* (Vic) provides a model for this proposed legislative framework.



and contribute to reducing the overrepresentation of people with disability in prisons and the Victorian criminal justice system.

## 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 also co-located at RMIT University's Social Innovation Hub with two community legal centres: Youth Law and the Law and Advocacy Centre for Women.

### Enabling and Supporting Justice

In 2011, a Corrections Victoria 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.<sup>2</sup> Responding to this study, the CIJ and Jesuit Social Services conducted the Enabling Justice project, which examined the overrepresentation of people with acquired brain injury (ABI) in Victoria's criminal justice system, drawing out the missing perspectives on the solutions from the people with lived experience of the criminal justice system and ABI. Central to this project were people with ABI and lived experience of justice involvement.

Enabling Justice's findings documented in the report *Recognition Respect and Support: Enabling Justice for people with an Acquired Brain Injury*,<sup>3</sup> 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.

Following this project, the CIJ created the Supporting Justice project, which worked with key stakeholders from the criminal justice and disability service systems to find opportunities for systemic 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. Lived experience participants were instrumental in these consultations and helping the Supporting Justice project understand which areas should form our priorities for change.

The Supporting Justice Project identified four priority areas which would create long term change to prevent people with disability becoming entrenched within the justice system:

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<sup>2</sup> Martin Jackson et al., 'Acquired Brain Injury in the Victorian Prison System' *Corrections Victoria Research Paper Series* (2011) Paper No. 4.

<sup>3</sup> 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 available at <https://cij.org.au/cms/wp-content/uploads/2018/08/enabling-justice-full-report.pdf>



- **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.

The CIJ continues work to promote and address these priority areas and working with people with lived experience to design solutions that respond to their needs.

## **Disability Act 2006**

Whilst the work of the CIJ has focussed on the experience of people with a disability in the justice system, the work of Enabling Justice and Supporting Justice highlights some key learnings that are relevant for the Review of the *Disability Act 2006*.

- People with disability are overrepresented in overlapping and intersecting systems such as justice, housing, health and child protection. People with disability are not limited to engaging in disability specific services or NDIS only. The majority of people with disability in the justice system are not within forensic disability services, but mainstream justice systems.
- People with disability involved in justice systems experience compounding levels of disadvantage and discrimination that are embedded in systems. These systemic factors must be addressed through positive duties and steps.
- People with lived experience bring unique and essential expertise and must be genuinely engaged with when designing programs, services and policies that affect them.

Drawing from our recommendations to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability and based on the above key learnings, the CIJ suggests the following:

### **Expand the scope of the *Disability Act 2006***

Throughout the Enabling Justice and Supporting Justice projects, people with lived experience told the CIJ about the multiple, overlapping and complex systems that people with disability are involved in before, during and after they have involvement with the criminal justice system. The Supporting Justice System Map<sup>4</sup> is a visualisation of some of the factors that impact on people with disability in contact with the criminal justice system. These factors highlight the various systems people with disability are involved in, including education, child protection, health services, housing or homelessness services, police, courts, prisons, in addition to disability services.

Further, within justice services, the majority of people with disability are engaged with mainstream services, not disability specific forensic services. This means that mainstream police, court and corrections systems provide services to people with disability as part of regular activity. If the Act is the primary legislative framework to support people with disability in Victorian society, the Act must recognise that people with disability are engaged across all public sector services, not just disability specific services. Therefore, the scope of the Act should be expanded to apply to all public sector services, both in their mainstream and disability specific services and programs.

Additionally, a consistent finding of the Supporting Justice project's consultation with system stakeholders, was that there is poor coordination and information sharing between systems. The NDIS creates an added layer of complexity to information sharing and system navigation. During

<sup>4</sup> <https://cij.org.au/research-projects/supporting-justice-system-map/>



these consultations, the CIJ heard that the lack of coordination and information sharing leads to discrimination, gaps and creates barriers for people with disability to access and meaningfully participate in services. The Act should address the relationship between the multiple public sector services that people with disability engage with and encourage coordination and information sharing where it enables people to better access and participate in services.

### **Recommendations:**

The objective of the Act should:

- promote and protect the rights, freedoms and dignity of people with disability accessing all public sector services;
- ensure that all public sector systems design and provide services that promote the full and meaningful participation of people with disability; and,
- coordinate all state public sector services that are integrated with the NDIS to ensure people with disability are adequately and appropriately supported.

The State Disability Plan should include how to improve cross-sector communication and information sharing, specifically between State public sector services and the NDIS.

Disability action plans should apply to all public sector services, particularly justice, housing, education, child protection and health.

## **Create a positive duty to address disability discrimination in Victoria**

Disability can refer to 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. 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.

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.<sup>5</sup> 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.<sup>6</sup>

These entrenched cycles of disability discrimination and compounded disadvantage require positive steps to address the multiple and complex factors that put people with disability at risk. For example, as evidenced in our report *Recognition Respect and Support: Enabling Justice for people with an Acquired Brain Injury*,<sup>7</sup> it is not sufficient that the criminal justice system simply recognise the prevalence of ABI in the system. The system must take positive steps to recognise ABI in individuals, recognise any additional communication and support needs, train staff to recognise causes, symptoms and support needs of an ABI and make supports available and accessible to people with an ABI.

The Act presents an opportunity to create a legislative framework to promote and create long term cultural change and address barriers to people with disability. This means changing the culture that normalises ableism and places responsibility on people with disability to address the barriers

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<sup>5</sup> Australian Human Rights Commission, *Equal before the law* (2014) 24.

<sup>6</sup> 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.

<sup>7</sup> 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 available at <https://cij.org.au/cms/wp-content/uploads/2018/08/enabling-justice-full-report.pdf>



that face them. The Act should represent a strong commitment to promoting and protecting the rights of people with disability to ensure their equal participation in society and to addressing systemic discrimination and barriers that people with disability face. The Act should place a positive duty on public sector services to educate their workforce to recognise and identify disability and disability needs, apply a universal and precautionary approach to accessibility and promote policies that place the onus to recognise and respond to disability on services, rather than individual people with disability.

### *Recommendations:*

The objective of the Act should:

- make a strong statement about protecting and promoting the rights of people with disability;
- place a positive duty on public sector services to promote equality for people with disability and to prevent and reduce the systemic discrimination and barriers for people with disability;
- place a positive duty on public sector services to prevent and reduce the pathways into the criminal justice system for people with disability.

The principles of the Act should include:

- a recognition of the overrepresentation of people with disability within criminal justice systems and the compounding nature of this disadvantage;
- a recognition that the responsibility to address barriers and needs should not be placed on individuals and should reside with services.

The State Disability Plan should include:

- a Disability Justice Strategy, as proposed in the Australian Human Rights Commission 2014 Report, *Equal Before the Law*,<sup>8</sup>
- a plan for improved pathways for secure long-term housing for people with disability;
- a plan to improve early intervention and diversion for people with disability in contact with or at risk of contact with the criminal justice system;
- a plan to provide disability and trauma awareness training across the public sector workforce.

## **Embedding lived experience in programs, services and policy**

The CIJ has benefited from an ongoing dialogue with people with disability and lived experience of the criminal justice system. The Enabling Justice project involved establishing a 'Justice User Group' of people with ABI and lived experience of justice involvement who provided advice on improving the criminal justice system's response, including the 35 recommendations for reform set out in *Recognition Respect and Support: Enabling Justice for people with an Acquired Brain Injury*<sup>9</sup>. The Supporting Justice project helped develop capacity building and training for people with lived experience to contribute their expertise to policy, program and service design. This training known as Voices for Justice<sup>10</sup>, led to the formation of a lived-experience advocacy group, Voices for Change, now auspiced by Fitzroy Legal Service who continue to provide lived experience expertise across the justice and disability sectors.<sup>11</sup>

<sup>8</sup> Australian Human Rights Commission, *Equal before the law* (2014) <https://humanrights.gov.au/our-work/disability-rights/publications/equal-law>

<sup>9</sup> 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 available at <https://cij.org.au/cms/wp-content/uploads/2018/08/enabling-justice-full-report.pdf>

<sup>10</sup> See <https://cij.org.au/research-projects/voices-for-justice/>

<sup>11</sup> See <https://cij.org.au/news-and-views/voices-for-change-self-advocates-call-on-policy-makers-to-listen/>





The benefit of genuinely engaging the expertise of people with lived experience has been recognised by the Royal Commission into Victoria's Mental Health System.<sup>12</sup> 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.<sup>13</sup>

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

The Act should encourage and set requirements on public sector services to embed mechanisms to engage people with lived experience when designing their programs, services and policies that affect them. Genuine engagement means that programs, services and policies will be sustainable, fit for purpose and ensure that people with disability are confident in these services.

### *Recommendations:*

The objective of the Act should be to ensure that people with lived experience should be involved in the design of all programs, services and policies that affect them.

The principles of the Act should include a recognition that people with lived experience of disability and the systems that affect them provide valuable expertise.

The State Disability Plan and Disability Action Plans should include mechanisms for including lived experience of disability into how public sector services review and design of programs, services and policies.

## Further Information

Thank you for the opportunity to provide this submission to the Review of the *Disability Act 2006*.

For any further information or questions, please feel free to contact us.

Stan Winford  
Associate Director  
Centre for Innovative Justice  
E: [kristann.winford@rmit.edu.au](mailto:kristann.winford@rmit.edu.au)  
P: +613 9925 1189

Verena Tan  
Senior Advisor  
Centre for Innovative Justice  
E: [verena.tan@rmit.edu.au](mailto:verena.tan@rmit.edu.au)  
P: +613 9925 5662

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<sup>12</sup> Royal Commission into Victoria's Mental Health System, *Interim Report* (2019), 387, 410.

<sup>13</sup> Criminal Justice Alliance, *Change from Within: Insights from people with lived experience working to improve the criminal justice system* (2019) available at <https://www.criminaljusticealliance.org/wp-content/uploads/Change-From-Within-FINAL-online.pdf>