



Submission to the Australian Human Rights Commission:

Access to Justice in the Criminal Justice System for People with Disability

Submission by: Australian Community Support Organisation

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About the Australian Community Support Organisation (ACSO)

In the last three decades, we have grown from a small organisation providing a halfway house for ex-prisoners to becoming a leading provider in forensic services in Australia. **Our vision is to create a safe and inclusive community freed of crime and prison.** Our growth is testament to our ethos, 'create another chance' and how we go about doing it portrays our values.

ACSO helps people transition from prison, assist them in the community to stop them from re-offending and divert others from committing crime in the first place. We offer innovative services responding to unemployment, mental illness, disability, homelessness, substance use and offending behaviour. These services are delivered through our 'wrap around' service delivery model that integrates our forensic residential, clinical care, disability and mental health case coordination and employment services to achieve better outcomes for our clients and the communities we serve. ACSO delivers more than 20 programs to approximately 20,000 clients per annum. ACSO operates these services via four divisions:

1. Clinical Services
2. Complex Care
3. Forensic Residential Services
4. Employment Services

ACSO's work with people with disability

ACSO has been working with people with disability for over 22 years. ACSO operates 14 distinct services to Victorians who have a disability such as residential, therapeutic, outreach and employment services to offenders with disabilities. Whilst the majority of our clients have an ID, most experience additional challenges or barriers, including cognitive impairment, psychiatric disability, substance misuse, social isolation, homelessness, poverty and lack of access to vocational and educational opportunities.

ACSO's experience working with people with disability strongly focuses on those who have contact or are at risk of contact with the criminal justice system. For example, this expertise is implemented via our (Crime and Violence Prevention) award winning Francis House Residential Service in the North West Region. Francis House was established in 1989 to offer 12 month placements to people who have an ID with forensic histories. The primary aim of this service is to assist clients to overcome the barriers associated with remaining offence free post contact with the criminal justice system and develop the skills necessary to live more independently. With over 20 years of operations, the service alone has supported over 1,000 individuals with complex needs and many of those were assisted to move to more independent living and to fulfil life goals and aspirations. Today ACSO operates 9 residential facilities like Francis house across Victoria including the States only dual disability house, for people with both an ID and a psychiatric disability who present with significant behaviours of concern.

ACSO's Problematic Sexual Behaviour Service (PSBS) was established in May 1997 to work with persons over 12 years of age who have an ID and are at risk of committing or have committed sex offences. The primary aim of the PSBS is to provide services to young individuals who may not meet the criteria to attend the Disability Forensic Assessment and Treatment Service, but display dangerous or potentially dangerous sexual behaviours. The focus of the service is on early intervention (prevention) work with clients. In the past 12 months, over 40 participants have entered the mandatory program for intensive therapeutic support.

ACSO is Australia's only provider of a specialist Disability Employment Service (DES) program for people who are offenders and who present with an ID, Psychiatric disability or substance misuse problem connecting with hundreds of people with disabilities either on release from prison, or in the community to enable them to develop pathways into employment.

The past 20 years of working effectively with people with disability has not only provided ACSO with the skills necessary to manage the common risks and issues of this client group, but also the capacity to address the wide range of complex needs and compounding factors that are often present as additional risks in relation to this group.

Scope

ACSO welcomes the opportunity to make this submission in regards to the access to justice in the criminal justice system.

ACSO has limited the scope of its submission focusing on the experience of people with ID and/or cognitive impairment when they access Victoria's criminal justice system. The information on this submission was drawn from ACSO staff, service users and where applicable supporting literature.

Key issues & themes

In consultation sessions across all levels of the organisation, there were a number of issues and themes that were identified. People with disability are over-represented in the criminal justice system whether as complainants, litigants, defendants, victims or other witnesses.¹ There was a general consensus that barriers existed in the access to justice in the criminal justice system for people with disability, and our response is guided by those identified in the paper.

Barrier 1: Community support, programs and assistance to prevent violence and disadvantage and address a range of health and social risk factors may not be available to some people with disability. This means that people with disability are left without protection and face ongoing violence, or have repeated contact with the criminal justice system because appropriate programs and community support are not available.

Access to services

ACSO staff believe that there is a need for services that can support people with disability before their proceedings reach the court. Evidence received by the VLRC suggested that the availability of services and supported accommodation facilities in the community is an important mechanism for ensuring that people with an ID or cognitive impairment do not necessarily become involved in the justice system.² One staff member noted that there are a lot of services with criteria that require clients to be mandated to engage in their services.

“Given that we are regularly promoting that the most therapeutic element of what we can offer is when people are motivated to change and voluntarily engage the service, then why don't we embrace that and make that happen rather than have clients mandated to engage in services?”

It is also important to have support services that are willing to persevere and work with the client or assist the client with the process until the most appropriate service can be identified. Most commonly, complex clients are moved from one service to the other and this can have a negative impact on the client. A staff member stated:

“If they are moved from one service to the other, they (the clients) give up pretty quickly. They feel like they have been handballed off... or burnt again.”

We also identified that another issue with access to services is navigating the available support services. Staff agreed that this system is complex and fragmented for people with disability and their support workers. One staff stated:

“Even when clients go to court, we know that there are different court programs like CISP available but there is no official pathway to access those services. They are also all acronyms and our clients do not know what it means to access them.”

The introduction of the new National Disability Insurance Scheme may help bridge the gap for people with disability when they need to access services. However, there is some concern whether this scheme will

¹ Civil Society (2012). *Disability Rights Now. Civil Society Report to the United Nations Committee on the rights of persons with disabilities*, http://doc.afdo.org.au/CACHE_DUVIE=09b0a0c991f5d60d877c647697135cfc/CRPD_Civil_Society_Report_PDF

² Law Reform Committee. (2013). *Inquiry into Access to and Interaction with the Justice System by people with an Intellectual Disability and their Families and Carers*.

increase or decrease the access to support services for our client group. It is not yet clear how the forensic client group will fit in the national scheme.

Another issue raised was the identification of people with disability as having a disability; which is a vexed issue.

If people with disability are not identified as having a disability they are unable to access early intervention and a range of other support and services. There are numerous examples of the negative impact this can have for people with disability such as the option to have the ITP present during police interviews and the option to access diversionary programs.

However, there is a negative impact accessing support services can have on people with disability because of the stigmatisation. One staff member noted:

"It's not just about people not being identified. Some people do not wish to be identified as having a disability and they choose not to engage in services until they hit the criminal justice system and it is almost mandated that they do so."

Barrier 2: People with disability do not receive the support, adjustments or aids they need to access protections, to begin or defend criminal matters, or to participate in criminal justice processes.

Communication

One identified barrier is communication. It is estimated that the incidence of communication difficulties amongst people with a disability is between 40-50%.³ ACSO staff indicated that there is not enough information about the justice system in plain language and that clients' court experiences were distressing because of the complex language used in the court environment is difficult to understand. The Victorian Law Reform Committee (VLRC) also heard that more simple and plain English format documents outlining legal rights and processes should be available to minimise opportunities for a person with disability to come in to inadvertent and adverse contact with the justice system because he/she is unable to access information regarding legal rights and responsibilities.⁴

"The criminal justice system will always be an overwhelming experience to people with disability regardless of the communication styles that are used. Clients are often anxious, heightened and fearful of the outcome. For example, we had a client at a hearing in VCAT where the language used was appropriate for the client's needs but there were still some topics that were discussed such as finance that we wondered if the client understood what was said." ACSO forensic housing worker

Staff also agreed that there is an expectation that our clients understand and will comply with the orders given by the courts. From consumer experience, courts do not often take enough time to ensure that clients understand the orders given and it is often up to support workers/case managers to provide this information to clients in plain language. ACSO staff report feeling as though they have to undertake a role that they are not prepared for and it imparts responsibility on to support workers/case managers to provide legal information to clients.

As these experiences entail a significant amount of jargon and complex statements people with disability will often have a great deal of difficulty understanding the legal advice given to them.⁵ Staff reported that legal advocates struggle with the idea of presenting legal documents in plain English. Commonly, they only take 30 minutes before the hearing to discuss with the client what will happen or will be said in the hearing. One staff member described a meeting one of our clients had with her legal team:

³ Armstrong, M.(2006). *Background Paper: Intellectual Disability (ID), Communication and the Law*. West Heidelberg Community Legal Service, http://www.communitylaw.org.au/westheidelberg/cb_pages/images/Intellectual%20disability,%20communication%20and%20the%20law.pdf

⁴ Law Reform Committee. (2013). *Inquiry into Access to and Interaction with the Justice System by people with an Intellectual Disability and their Families and Carers*.

⁵ Intellectual Disability Services. (2008). *Enabling Justice: A report on Problems and Solutions in relation to Diversion of Alleged Offenders with Intellectual Disability from the New South Wales Local Courts System*, www.idrs.org.au/pdf/enabling_justice.pdf

“The lawyers did not take into account the fact that the client had an intellectual disability. They spoke quickly with the client and did not make the time to ensure that the client understood what was being said. During the meeting, the client was showing signs of acquiescence and at the end of the meeting, the client asked me to explain to her what was said in the meeting.”

This barrier can also be found when people with disability are questioned by the police. One staff stated that during questioning, police not uncommonly use leading questions when interrogating people with disability and these often lead to compliance. Clients want to make the process quick and often want to give the police what he/she thinks the police want to hear.

However, staff agreed that the response from police in involving the Independent Third Person (ITP) is of benefit. If police recognise that a suspect has an ID or mental illness they are required to contact the ITP to be present during the interview with the suspect and provide support for them.⁶ Staff agree that the ITP program has been critical in trying to bridge the communication gap but it also has its limitations such as:

- It depends on the assumption that the police will identify that the person has a disability therefore offer the option; and
- It is comprised of volunteers and it is vastly under-resourced and that can become a barrier due to the extensive delays incurred whilst waiting. This can be difficult for clients with cognitive impairments to understand as they lose the relevance of the situation due to the delayed response.

Support Workers' Role

From the perspective of staff members as carers providing support to people with disability; barriers were identified when clients accessed justice in the criminal justice system. There are frequent reports by staff that some justice system representatives have limited knowledge of a support worker's role.

In regards to staff interaction with the police, they reported feeling as though the police misinterpreted their role making the interaction between police and support workers difficult. Staff agreed that police have the belief that it is the support worker's responsibility to manage the clients' risks. Based on staff's experience, the police tend to only respond to an immediate threat and are limited in their capacity to work collaboratively to prevent an incident from emerging. One staff member mentioned that:

“... in one particular instance a police officer walked away from an incident where a client was about to assault a support worker.”

There are also instances of misconceptions amongst judges and solicitors on the role of support workers. Staff reported that both judges and solicitors expected support workers or case managers to be present during the session to explain to the client what was being said. This relates back to the issue of communication that was discussed earlier in the submission. The responsibility to ensure that clients understood what was happening in the court sessions was shifted to support workers or case managers when they reported feeling inadequate to assume that responsibility.

Legal System Processes

Staff agreed that the adversarial court environment and the structure of the court system is intimidating and too complex for many of our clients with an ID to understand. The formal court process does not provide adequate opportunity to explain meaningfully to the alleged offender what concerns existed with his/her conduct or the implications of the court's decision.⁷ One staff member stated that:

“... often our clients wait long periods of time before they are heard in court. They became frustrated because of the lack of involvement in the process and the delayed responses.”

⁶ Villamanta Disability Rights Legal Service (2012). People who have an Intellectual Disability and the Criminal Justice System: A guide and educational tool for people working in the criminal justice system: Judges, Magistrates, Court Staff, Lawyers, Advocates, Police and Corrections Worker.

⁷ Intellectual Disability Services. (2008). *Enabling Justice: A report on Problems and Solutions in relation to Diversion of Alleged Offenders with Intellectual Disability from the New South Wales Local Courts System*, www.idrs.org.au/pdf/enabling_justice.pdf

Although this experience is not unique to people with disability, it has a compound effect on them. From experience, staff noted that the police and the courts' response time to an incident involving a person with disability was lengthy.

Barrier 3: Negative attitudes and assumptions about people with disability often result in people with disability being viewed as unreliable, not credible or not capable of giving evidence, making legal decisions or participating in legal proceedings.

People with disability are also likely to experience disadvantages when seeking to give evidence in court. The VLRC found evidence that suggests that people with an ID or cognitive impairment are sometimes perceived to lack the capacity to give evidence in court. This may occur if a person with an ID or cognitive impairment finds it difficult to understand complex court processes or to follow a line of questioning conducted by counsel.⁸ Staff agreed with this and stated:

“Although there is due process, unfortunately for our clients their credibility is often questioned, particularly for victims...”

“Especially the ones who “cry wolf” all the time, they are the ones that are most at risk because there is going to be an occasion where they are actually telling the truth and everyone just brushes it off.”

Staff members have also experienced police's reluctance to pursue matters involving people with disability;

“...when people are associated with our services particularly for those who have an ID or their fitness to plead comes into question, the police are often a bit reluctant to pursue matters where they think that it's just going to be a waste of time; it's going to be a lot of work only for the client to be found unfit to plead.”

Another staff member stated:

“The client threw oil on her next door neighbour because she was having a bad day. The neighbour did not trigger this behaviour from the client. The police were contacted and when they arrived at the scene and realised the client had an ID; they were reluctant to press charges because they believed it would be difficult to prove that the client was fit to plead.”

Staff reported feeling that sometimes the criminal justice system takes away clients' responsibility because of their disability. Staff have found that the police sometimes lessen the severity of our clients' charges or talk people out of pressing charges against our clients because of the disability. As a result of this, and with the legal system's delayed response, our clients do not always face the natural consequences of their actions, thus may not learn the severity of their actions through associating punishment as consequence, and thus serving as a deterrent.

“They (offenders with a disability) easily fall through the crack and get lost in the criminal justice system. They are the ones that are more likely to go in and out of custody.”

Staff raised the issue of the appropriateness of diversion options for people with disability. Staff agreed that effective diversion plans are important for our clients prior to court because it allows them to be referred to appropriate services which will provide them with the support they need.

However, one staff noted that there are cases where the diversion plans are not the most appropriate option for clients at that particular time. When this happens, the patterns of relinquishing responsibility for one's actions or losing perspective of the seriousness of their actions can emerge. Staff suggested that if a client has frequent contact with the criminal justice system and there is evidence indicating that such processes are not effective, and that more serious repercussions may assist in sending a clear response to that client.

⁸ Law Reform Committee. (2013). *Inquiry into Access to and Interaction with the Justice System by people with an Intellectual Disability and their Families and Carers.*

Barrier 4: Specialist support, accommodation and programs may not be provided to people with disability when they are considered unable to understand or respond to criminal charges made against them ('unfit to plead'). Instead, they are often indefinitely detained in prisons or psychiatric facilities without being convicted of a crime. This situation mainly happens to people with intellectual disability, cognitive impairment and people with psychosocial disability.

ACSO currently manages nine residential facilities and approximately 45 specialist beds, with a new eight bed facility due to be built in 2014. Many services that would normally cater to this population, 'vulnerable disability' are not equipped with resources and specialist training in the forensic area, and therefore, will refuse to work this population, or worse if they do work with this cohort, they aren't targeting the person's criminogenic needs and maintaining the offending or high risk behaviour.

There is also limited flexibility in the type of accommodations in disability, to respond to the person's different level of risk they pose to the community. Our service is unlocked and located in the community setting, which means we accept referrals based on eligibility and suitability. The only secure facility in the state for this population is not exclusive to the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (CMIA) orders, and therefore those limited beds can easily be filled by other custodial orders. This is the same experience for ACSO, our beds are not exclusive to CMIA orders and therefore the limited beds that exist are not specifically allocated to these client's needs.

As a result of our successful outcomes with CMIA clients, ACSO has a growing waiting list for our residential services and we are challenged daily to respond to the growing demand in providing supports to these clients transition from more restrictive to less restrictive environments.

From our experience, the offending and other complex emotional and behavioural issues our clients present with, pose a real challenge in servicing and accommodating persons who are subject to the CMIA regime. Especially in trying to provide gradual and safe reductions in restrictions that are responsive to the person's risks and needs. The severity of crimes our clients have engaged in, often lead them to being excluded from inclusive services, as well as not being welcome to return to specialist services that work with the forensic population. This may increase the likelihood of their recurrent offending. However, with the open door policy within ACSO's accommodation and immediate access to the expertise in our other services, we acknowledge that accessing ACSO forensic residential services for many of our clients is a viable alternative to a prison sentence. However our ability to provide a flow of beds is at best exceedingly challenging.

Further to this, the CMIA clients pose a special risk to themselves, being vulnerable. Therefore, at times, the person who would benefit from the service may need to be rejected due to the risks associated with them residing with other non-CMIA forensic clients. This poses a significant challenge for the overall sector.

Case example A: Mr V is a 19 yo male with an ID and a range of behaviours of concern including aggression has lived as a Ward of the State in out of home care programs and in the community. His challenging behaviours have meant his care and support is provided in a house with 1 other resident and 24/7 staffing. His most recent charges, to attack and "bite off the cheek" of one of the staff has seen him remanded in custody. He is a man that is already subject to a Non-Custodial Supervision Order. In order to manage this young man in the prison environment he has been shackled and in "lock down" for 22 hours a day. His release from Remand is contingent on finding suitable accommodation, and to date there is no clear pathway yet established into accommodation. Mr V was referred to ACSO services, however with all of our beds full, he is still remanded in custody. As a result, he will most likely transition into an accommodation setting that may maintain his behaviours of concern and are not responsive to his needs. Or worse, he will stay imprisoned with the current management system in place. Clearly this response limits opportunities for Mr V to stabilise and build the internal and external mechanisms to manage the behaviour within a safe and supported residence.

This case highlights this person's vulnerability and significant risk to others, which could not currently be supported in mainstream disability residential services, or mainstream forensic residential services.

Case example B: Mr M a male in his early 50s with an intellectual disability and psychiatric disability. At the time of his offences, which occurred almost 30 years ago, was advised by his legal counsel to plead "unfit to plea" under Victorian legislation for a sex offence crime against a child in his family. Following this advice Mr M was detained "at his Governors pleasure" for a period of 25 years in prison and in a secure facility in the community. With ACSO support Mr M challenged this with the mental health review board and applied to the County Court and today lives in one of ACSOs residential services "Western House". 2 years ago Mr Ms order was varied from a custodial supervision order to a non custodial supervision order. This was a lengthy complex process. Mr M is fully participating in the community (with environmental management in place) and has not reoffended. Ironically, had Mr M pleaded guilty his sentence would have been significantly shorter. Mr M is one of the few forensic patients who have undergone this process of transitioning from a custodial supervision order to a non-custodial supervision order with a great degree of success.

Barrier 5: Support, adjustments and aids may not be provided to prisoners with disability so that they can meet basic human needs and participate in prison life. They often face inhuman and degrading treatment, torture and harmful prison management practices.

Without doubt prison is not the "right" or "best" place for some offenders who present with multiple and complex needs as a result of an ID, cognitive impairment or psychiatric disability and for whom a mainstream prison environment *is not suitable*.

Case example C: Mr SB was transferred from youth detention into a mainstream adult prison. Identified as having a mild ID MR SB presented many significant issues including a number of violent assaults on other inmates, prison officers and visiting professionals and quickly became a "management prisoner" in solitary confinement in a specialist unit locked down for 22 hours a day and handcuffed in an exercise yard for the other two hours. Over a period of time MR SB was diagnosed with an axis 1 mental illness (schizophrenia) and medicated. When his sentence was nearing its end, he was released into the community with a package of support on parole. Troublingly, there are few alternatives to prison for this young man.

This case illustrates the difficulties for vulnerable persons transitioning from the youth justice system to the adult disability system. The adult prison system may potentially increase the 'younger' persons' risk to their self and others, as well as increase demands on resources that are not necessarily responding effectively to their needs anyway. Although this person was provided a package of post release support, what is missing from the case review is the time and resources that would have gone into negotiating and collaborating between different services streams to confirm that package, and delineate responsibility, activities and accountability across services. This presents a common 'reactive' response to this client group.

The challenges that were presented in this case include a workforce without the specialist skill, knowledge and experience to address and respond to the challenging behaviours of people with an ID, cognitive impairment and/or psychiatric disability which inevitably see the offenders behaviours of concern increase, their privileges get removed, and in many cases, see them having to be contained away from the mainstream population, often for everyone's safety.

As a service partner working alongside Corrections Victoria ACSO fully supports the "Embracing the Challenges Corrections Victoria Disability Framework 2013–2015" as a positive step forward in addressing the challenges and issues our cohort (those with an ID and psychiatric disability) face. The Framework recognises that there is "*scope to improve the range of services and programs which are currently available and address existing gaps. It has long been recognised that offenders with a disability require habilitation – addressing gaps in their skills – as well as rehabilitation to address their offending behaviour.*" Many of the initiatives identified could be considered broadly across a range of jurisdictions

The framework commits ACSO to working with Corrections Victoria across the Victorian Criminal Justice System in the following areas:

- Providing joint learning and development opportunities for Corrections Victoria and ACSO in relation to delivering offence-related programs for offenders with an ID.
- Building collaborative partnerships with key disability organisations create opportunities for multi-dimensional, cross-sectoral communication such as ACSO
- Focusing on a broader forensic disability workforce that is fostered and feeds into Corrections Victoria workforce as needed;
- Support ACSO to establish an Australian clearing house of information relevant to the forensic disability sector. And supporting the ACSO Forensic Disability Conferences in 2013 and 2015.

Recommendations

Please find below recommendations that ACSO believes should be considered to improve the access to justice in the criminal justice system for people with a disability.

Court Support Services

There are great initiatives implemented in the justice system to assist people with disability coming into court. For example, the Magistrates' Court implemented the Court Integrated Services program (CISP) and the Assessment and Referral Court (ARC) List which work jointly to offer a co-ordinated team-based approach to the assessment and treatment of defendants with a disability at the pre-trial or bail stage. Another example is the Neighbourhood Justice Centre (NJC) which has adopted an innovative multi-jurisdictional court with an array of support services and community initiatives that responds to and accommodates the needs of people with disability.

A common limitation that can be found in these services is the differential access based on eligibility criteria. For example, currently CISP only operates at three Magistrates' Courts (Melbourne, Sunshine and Latrobe Valley) so therefore only defendants within those catchment areas can access the service. The same applies to NJC which only serves people residing or offending within the City of Yarra.

Given the benefits and support these services provide people with disability encountering the criminal justice system, ACSO recommends an expansion of these services to the related courts in all areas so that access to these services is available to all potential clients without geographical limitation.

Specialist Court Response or Problem Solving (Diversion) Courts for Forensic Disability

Utilising the learning's and framework from the ARC List, as well as taking on the legislative framework for Compulsory Treatment (under the *Disability Act 2006*), there should be a problem solving division in the court that reviews and responds to these cases with persons with an ID. The cases which present with serious offences, and/ or complex legal arguments should then be referred to the higher courts. Having a problem solving court that has a diversionary and therapeutic focus, is more likely to produce outcomes that assist in the reduction of lengthy delays in initiating court proceeding as well as provide a targeted response that manages the persons' risk and needs at that immediate time.

Disability Liaison Officer

ACSO believes that a disability liaison officer can facilitate better management of people with disability when they access the justice system. There is evidence in the sector that services are trying to bridge the knowledge gap by introducing liaison officers that have knowledge of multicultural, youth, mental health, disability, GLBTI, aged and human rights issues.

Evidence of this can be found in the Victoria Police where they have officers that liaise, educate, analyse data and advise police officers and the community on GLBTI, multicultural and Indigenous issues.⁹ They have also implemented the Community Engagement Support Team (CEST) that works in conjunction with

⁹ Victoria Police website: <http://www.police.vic.gov.au>

the liaison officers to set standards for police responses to community needs, to work with other government agencies and to provide expert advice to other areas of Victoria Police on multicultural, youth, mental health, disability, GLBTI, aged and human rights issues¹⁰.

The Magistrates' Court also has mental health court liaison officers across metropolitan and regional court locations which provide court-based assessment and advice services.

ACSO supports these initiatives recommending that a liaison officer role specialised in disability issues is established within the Victoria Police and the Magistrates' Court. ACSO suggests that this role may be based on the concept of the Youth Parole Board senior disability advisor role which aims to build capacity of youth justice and disability client services staff and to strengthen & support collaboration between disability services and youth justice throughout the case management process.

Diagnosis and Identification within the Criminal Justice Setting

Diagnosis and identification systems within the criminal justice setting need to be further enhanced to ensure that offenders with an ID are recognised with an ID and are provided the specialist response when they come into contact with criminal justice system. For example, this could include increasing the training and awareness of front line police officers, in identifying and understanding persons with an ID as well as direct pathways to specialist services that can support the forensic disability clients. This may enable a more effective diversionary process, particularly for persons with an ID who come into regular contact with the justice system for low level offending behaviour.

Advocacy and Reform

Australia currently lacks a peak body that focuses on the manner in which persons with an ID interface with the criminal justice system. For example, within the UK the Prison Reform Trust takes on this leading role in evaluation and advocating for reforms that improve justice outcomes for persons with a disability (non-specific). ACSO is currently establishing a JI Lab – *Justice Innovation Lab* which intends on adopting a similar approach and lead innovation in the area of forensic disability, as well as other vulnerable groups.

Culture Change within the Victoria Police

A culture change needs to occur in the police force to accommodate the needs of people with ID. One staff member noted that:

“...traditionally they have been there to serve the community, to try to prevent crime, reduce crime and respond to crime. Now, more and more so, they have to play a role where they are our clients' first port of call. For this to happen, a massive culture change will have to take place over a long period of time.”

The Police play an important role in relation to the involvement and experiences of alleged offenders with ID in the criminal justice system.¹¹ ACSO believes that police needs to have a presence in the community, almost like a quasi-welfare role where they are aware of services and supports available to people with ID. They also need to have the authority to refer them – those services before they have contact with the legal system.

The police would have an early intervention role, where clients would be provided diversionary options before they go to court. If people with an ID are provided with early professional intervention support to address and if possible prevent the offending behaviours, the number of people with ID in the criminal justice system might decrease.¹² Given the complex role of the police, these referral systems should be simple, effective and provide support to the police officer.

¹⁰ Victoria Police Annual Report 2011-2012, <http://www.police.vic.gov.au/annualreport/index.html#/48/zoomed>

¹¹ Intellectual Disability Services. (2008). *Enabling Justice: A report on Problems and Solutions in relation to Diversion of Alleged Offenders with Intellectual Disability from the New South Wales Local Courts System*, www.idrs.org.au/pdf/enabling_justice.pdf

¹² Intellectual Disability Services. (2008). *Enabling Justice: A report on Problems and Solutions in relation to Diversion of Alleged Offenders with Intellectual Disability from the New South Wales Local Courts System*, www.idrs.org.au/pdf/enabling_justice.pdf

Increase Community Services Accountability to provide ‘first line’ response (linked to recommendation “Culture Change”)

Service providers need to be more accountable when providing a response to referrals made by police. Built in mechanisms need to be implemented to support the police to have a better ‘first line’ response from service providers, rather than exhausting police resources for high frequency incidents and/or waiting to implement support services once the person is well and truly a part of the justice system.

Educational Program

ACSO believes it is necessary to make educational programs available to not only the criminal justice system staff but also to disability service providers and clients, to educate each party regarding overcoming barriers for and with people with a disability and offending history.

Educational programs should include, but not be limited to:

- Resource packages which include information about the nature of the different disabilities and its impact on offending and participation in the criminal justice system and information about human services and other supports for people with disability¹³;
- Strategies on how to effectively communicate with people with disability¹⁴;
- Strategies on how manage and effectively respond to situations involving people with an disability; and
- Information about the criminal justice system in plain language.

Prisoners with disability

The following are considerations for management of people with disability who find themselves in prison:

- The development of programs / responses as an *alternative to prison* for those who cannot be humanely detained in a mainstream prison environment;
- Build a multi-disciplinary prison based staff team where greater knowledge and understanding of forensic disability is represented;
- Build collaboration across prisons (in Australia) with the specialist community services providers delivering programs and “care” in specialist units within prison for offenders with an ID (buying in the expertise);
- Implementation of life skills or prevocational programs in prison for offenders with an ID, cognitive impairment and / or psychiatric disability that help them to integrate into mainstream prison, and build skills for release;
- A greater focus on transition from prison for offenders with an ID, cognitive impairment and / or psychiatric disability that ensure all medications and supports for offenders with a psychiatric disability are established, and medications dispensed prior to release;
- The establishment of the Malborough Unit, at Port Phillip Prison demonstrates the need for a specialist response for this client group, which could be translated across all prison settings regardless of the prison’s status of security;
- Monitoring of the conditions that persons with disability are exposed to within the prison setting, should extend beyond the Office of the Public Advocate’s Community Visitor’s program, who is limited with resources to a set independent body that ensures regular review, evaluation and accountability are safeguarded. For example this could sit with the Disability Services Commissioner;

¹³ Intellectual Disability Services. (2008). *Enabling Justice: A report on Problems and Solutions in relation to Diversion of Alleged Offenders with Intellectual Disability from the New South Wales Local Courts System*, www.idrs.org.au/pdf/enabling_justice.pdf

¹⁴ Armstrong, M.(2006). *Background Paper: Intellectual Disability (ID), Communication and the Law*. West Heidelberg Community Legal Service, http://www.communitylaw.org.au/westheidelberg/cb_pages/images/Intellectual%20disability,%20communication%20and%20the%20law.pdf

- Commence access to and improved pathways through employment services whom are aware of this specialist population, and have expertise in working with the disability and offending populations, pre-release.

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