

NDS Submission

**Value of a justice reinvestment
approach to criminal justice in
Australia**



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About National Disability Services

National Disability Services is the peak industry body for non-government disability services. Its purpose is to promote and advance services for people with disability. Its Australia-wide membership includes around 800 non-government organisations, which support people with all forms of disability. Its members collectively provide the full range of disability services—from accommodation support, respite and therapy to community access and employment. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Federal governments.

The National Disability Strategy 2010–2020¹, endorsed by Commonwealth, State and Territory governments, sets out a plan for improving life for Australians with disability, their families and carers. It identifies six areas of policy action, one of which is ‘rights protection, justice and legislation’. Within this it notes:

People with disability who have complex needs, multiple disability and multiple forms of disadvantage face even greater obstacles within the justice system. There is an over-representation of people with an intellectual disability both as victims and offenders in the criminal justice system.² Significant rates of acquired brain injury are found among male and female prisoners.³ Research into intellectual disability and acquired brain injury has demonstrated the presence of co-morbidities with mental illness and substance abuse.⁴ This complex profile indicates the need for a specialist response.

- In New South Wales, the 2009 Young People in Custody Health Survey found that 13.5 per cent of young people surveyed had an IQ score equivalent to an intellectual disability (less than 70). A further 32 per cent scored in the borderline category (between 70 and less than 79) (NSW Juvenile Justice, 2009).⁵
- Identification of higher rates of deferral of parole of prisoners with an intellectual disability (compared with non-disabled prisoners) due to a lack of post-release accommodation with appropriate support (Department of Justice, Victoria 2009).⁶
- Prisoners with an intellectual disability have a higher average number of prison incidents recorded against them (Department of Justice Victoria, 2007).⁷

The Strategy identifies as one of the policy directions the need for “more effective responses from the criminal justice system to people with disability who have complex needs or heightened vulnerabilities”. Regular progress reports on the implementation of the Strategy will be made to the Council of Australian Governments.

In making this submission, NDS seeks to highlight how important it is that all governments commit significant effort to implementing the National Disability Strategy. While the major disability reform currently underway is the design and implementation of the National Disability Insurance Scheme—which occupies one of the six areas of policy action—this alone will not deliver the changes required beyond

¹ Commonwealth of Australia 2011, National Disability Strategy 2010–20120, FaHCSIA

² ABS, 2006, p.62 and Women with Disabilities Australia (WWDA), *Submission to the National Human Rights Consultation*, 2009, p.8

³ Corrections Victoria, 2009, *Committing to the Challenges – Corrections Victoria Disability Framework 2010-2012*, Department of Justice - State Government of Victoria, p. 12

⁴ Corrections Victoria, 2009, p. 12

⁵ NSW Department of Juvenile Justice, 2009, *NSW Young People in Custody Health Survey 2009: Key Findings Report*. NSW Department of Juvenile Justice,

⁶ Corrections Victoria, 2009, p. 12

⁷ Corrections Victoria, 2007, *Intellectual Disability in the Victorian Prison System*, Department of Justice - State Government of Victoria, p. 23

the specialist disability support system. Broader community and mainstream services and facilities that are part of ordinary Australian life need to become more available and accessible for people with disability.

This submission supports the proposal that justice reinvestment is an effective strategy for responding to people with disability who offend or are at risk of offending. Considered broadly, justice re-investment is consistent with the aims of the National Disability Strategy to increase the economic and social participation of people with disability. The risk of offending increases the more a person is disengaged from employment and community life. To the extent that people with disability experience low workforce participation rates and low social inclusion, they are at higher risk of offending behaviours and of being victims of crime.

People with a range of disabilities are disproportionately represented in justice systems. Among the findings of a report just released by the Victorian Law Reform Committee⁸ are:

- Anecdotal evidence and the limited statistical evidence that is available strongly suggest that people with an intellectual disability or cognitive impairment form a large and disproportionate proportion of offenders and victims of crime.
- Lack of coordination and collaboration between departments, agencies and community organisations that provide support to people with an intellectual disability or cognitive impairment can compromise the ability of a person with intellectual disability or cognitive impairment to exercise his or her rights and seek access to justice.
- Problem-solving approaches to justice, which aim to deliver therapeutic models of justice to disadvantaged sectors of the community, should be accessible to all people who require those programs living in metropolitan, regional and rural Victoria.

Research undertaken as part of the ARC Linkage Project at UNSW, *People with mental health disorders and cognitive disability in the criminal justice system in NSW*⁹, found that people with mental health disorders and cognitive disability (defined as intellectual disability, borderline intellectual disability and acquired brain injury) are over-represented in the criminal justice system as both offenders and victims. People with complex cognitive disability (broadly defined as a mental health disorder with an intellectual disability) are significantly more likely to have early contact with police, be clients of juvenile justice, have more police episodes through life and more prison episodes than those with a single disability or no disability. This is despite their offences being almost always in the lowest 10% of seriousness. The researchers also noted that Indigenous people with disability are significantly over-represented.

⁸ Law Reform Committee 2013, *Access to and Interaction with the Justice System by People with an Intellectual Disability and their Families and Carers*, Parliament of Victoria, pp. xxxvii–xxxviii

⁹ Baldry, E., Dowse, L. and Clarence, M. 2012, *People with mental and cognitive disabilities: pathways into prison*, UNSW, p.2.

A 2012 Villamanta Disability Rights Legal Service publication, *People who have an Intellectual Disability and the Criminal Justice System*¹⁰, describes difficulties that some people with intellectual disability—and people with acquired brain injury, Attention Deficit Hyperactivity Disorder and Autistic Spectrum Disorder (including Asperger’s Syndrome)—experience with the criminal justice system.

The important point to note from these reports is that people with a range of disabilities are over-represented in the justice system and that the disability may present in diverse ways and may not be identified by police or other officers of the justice system. The consequences for the individuals with disability may be dire.

Responding to the issue

A justice reinvestment approach offers the potential to reduce the number of people with disability who commit crimes. The preliminary report on findings of the UNSW research into people with mental and cognitive disabilities concludes:

It can be theorized that many in these groups with complex needs become locked, early in their lives, into cycling around in a liminal, marginalized community/criminal justice space...a space that is neither fully in the community or fully in prison. They do not fall through the cracks, they are directed into the criminal justice conveyor belt. This suggests it is important to recognise the different space and need for different disability and rehabilitative interventions and supports at many points along these persons’ pathways.¹¹

Young people with disability who may be at risk of committing offences need to be recognised early and diverted from becoming engaged in crime. This identification is likely to be easier for those with severe disability as they may already be engaged with the specialist disability sector. The National Disability Insurance Scheme, when implemented, should have a significant interest in funding the early intervention services that will assist in preventing a young person with disability from entering the criminal justice system. The interface between specialist disability support and programs to divert young people from crime should be strengthened.

A harder ‘at risk’ group to identify will be young people who have mild to moderate disability who are not eligible for support from specialist disability providers. A justice reinvestment approach will need to investigate ways of identifying this group early and gaining evidence on what interventions are successful.

Other considerations come into play for people with disability who have offended. Where the crimes committed are serious, careful analysis should be given to how best to support them in the community when they are released (current cases of people with disability being detained for indefinite periods should be avoided). And where the crimes committed are not particularly serious, greater use of community-based orders should be utilised.

¹⁰ Villamanta Disability Rights Legal Service 2012, *People who have an intellectual disability and the criminal justice system*, Villamanta Disability Rights Legal Service, pp. 14–15

¹¹ Baldry, E., Dowse, L. and Clarence, M. 2012, *op. cit.*, p.15.

Many of the justice reinvestment programs in place overseas are place-based. Such an approach in Australia would not be effective at responding to people with disability who are, or are at risk of being, involved with the criminal justice system. Such people are unlikely to be concentrated in significant numbers in one geographic area. Justice reinvestment programs aimed at reducing the number of people with disability who come into contact with the justice system need to be designed around this disadvantaged and vulnerable population group.