



# SENATE INQUIRY INTO THE INDEFINITE DETENTION OF PEOPLE WITH COGNITIVE AND PSYCHIATRIC IMPAIRMENT IN AUSTRALIA

April 2016



**Jesuit  
Social Services**  
Building a Just Society

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## Introduction

Jesuit Social Services welcomes the opportunity to contribute to the Senate Inquiry into the indefinite detention of people with cognitive and psychiatric impairment in Australia.

For nearly 40 years, we have accompanied people involved in the criminal justice system. In Victoria, we work with people in the justice system through our Brosnan Services supporting people exiting prison and youth justice facilities. This includes the Corrections Victoria Reintegration Program in North and West Metropolitan Melbourne (Reconnect), the African Volunteering and Mentoring Program (AVAMP), Next Steps and Perry House residential programs, the Youth Justice Community Support Service and Group Conferencing. In the Northern Territory we support the Eastern and Central Arrernte people in a number of ways to better their situation and have more control over their lives. As part of this work, we are involved in a men's behaviour change program and support the Making Justice Work campaign to promote evidence-based approaches to community safety in order to respond more effectively to crime in the community. We also provide capacity building support in a number of other locations, including Wadeye, and work in a similar way in New South Wales (Mount Druitt and Bourke).

This submission draws on our grounded experience engaging with vulnerable people and communities throughout Australia. It focuses on the intersections of complex needs, disadvantage and disability; the impact of legislation; responding to the needs of people with cognitive impairment; access to justice; diversion practices; and staged community transitions.

While the main focus of our submission is on people with cognitive impairment, Jesuit Social Services acknowledges the significant involvement of those with mental/psychiatric impairment within the criminal justice system. Many of the key issues we identify and recommendations we make are also relevant to this group. We note that Aboriginal and Torres Strait Islanders, people with a dual diagnosis (of intellectual disability and mental health problems), women and young adults are particularly vulnerable cohorts. Victoria and the Northern Territory (particularly Central Australia) are the specific focus of our key findings and recommendations.

Based on our extensive experience and the evidence of what works, we recommend:

- 1. The detention of people with cognitive and psychiatric impairment should be used as an absolute last resort, once all other options have been considered.**
- 2. Amending the Northern Territory *Mental Health and Related Services Act* to further differentiate between and accommodate for the needs of people with cognitive impairment and psychiatric impairment.**
- 3. Amending Part IIA of the Northern Territory Criminal Code Act to include regular reviews of a person's term and introduce limiting terms rather than indefinite supervision orders. The Code should also be reviewed to determine whether people found unfit to plead should be dealt with outside of the criminal justice system.**
- 4. Developing specialised assessment tools for cognitive impairment at all stages of the justice system. These tools should cater for the needs of Aboriginal people.**

- 5. Ensuring more specialised options within prisons are available for sentenced people with cognitive disability.**
- 6. Ensuring all relevant staff in the justice system receive adequate support and training to enhance their awareness and understanding of cognitive impairment.**
- 7. Providing alternative rehabilitative responses in the community for people found unfit to plead due to cognitive impairment.**
- 8. Establishing more secure facilities for unsentenced, high risk individuals (outside of the prison environment) which support their rehabilitation and transition into the community.**
- 9. Reforming service systems to ensure early identification and intervention through holistic, integrated and culturally appropriate community-based services.**
- 10. Developing and implementing a framework for planning and resourcing therapeutic programs and services targeting people with cognitive impairment throughout the corrections system.**
- 11. Ensuring that all people with cognitive impairments can access specialised, problem-solving programs at courts. This should be underpinned by consistent screening referral processes. Specialised problem-solving courts, such as the ARC List, should be adopted in the Northern Territory.**
- 12. Ensuring people with a cognitive impairment have access to an Independent Third Person at key stages of their engagement with the justice system.**
- 13. Developing an evidence base to determine the effectiveness of pre-plea and pre-sentence diversion for people with cognitive impairment in the justice system.**
- 14. Developing a staged approach to release from custody for people with cognitive and psychiatric impairment, involving day release to build connections to community and links with support services.**
- 15. Preventing homelessness among people with cognitive disabilities exiting prison by developing a cooperative approach with housing services with a specific focus on the needs of people with cognitive or psychiatric impairment, and/or complex needs.**

## Jesuit Social Services: Who we are and what we do

Jesuit Social Services works to build a just society by advocating for social change and promoting the health and wellbeing of disadvantaged people, families, and communities.

Jesuit Social Services works where the need is greatest and where it has the capacity, experience and skills to make the most difference. Jesuit Social Services values all persons and seeks to engage with them in a respectful way, that acknowledges their experiences and skills and gives them the opportunity to harness their full potential.

We do this by intervening directly to address disadvantage and by influencing hearts and minds for social change. We strengthen and build respectful, constructive relationships for:

- **Effective services** – by partnering with people most in need and those who support them to address disadvantage
- **Education** – by providing access to life-long learning and development
- **Capacity building** – by refining and evaluating our practice and sharing and partnering for greater impact
- **Advocacy** – by building awareness of injustice and advocating for social change based on grounded experience and research
- **Leadership development** – by partnering across sectors to build expertise and commitment for justice

The promotion of **education, lifelong learning and capacity building** is fundamental to all our activity. We believe this is the most effective means of helping people to reach their potential and exercise their full citizenship. This, in turn, strengthens the broader community.

Our service delivery and advocacy focuses on the following key areas:

- **Justice and crime prevention** – people involved with the justice system
- **Mental health and wellbeing** – people with multiple and complex needs and those affected by suicide, trauma and complex bereavement
- **Settlement and community building** – recently arrived immigrants and refugees and disadvantaged communities
- **Education, training and employment** – people with barriers to sustainable employment

Currently our direct services and volunteer programs are located in: Victoria, New South Wales and Northern Territory. Services include:

- **Brosnan Services:** supporting young people and adults in the justice system, and assisting them to make a successful transition from custody back into the community. Within the suite of services are Perry House, Dillon House and Youth Justice Community Support Services.
- **Jesuit Community College:** increasing opportunities for people constrained by social and economic disadvantage to participate in education, work and community life and reach their full potential.

- **Community and Settlement Programs:** working with newly arrived migrants across metropolitan Melbourne and in NSW, including the African Australian and Vietnamese communities.
- **Connexions:** delivering intensive support and counselling for young people with co-occurring mental health, substance and alcohol misuse problems.
- **Artful Dodgers Studios:** providing pathways to education, training and employment for young people with multiple and complex needs associated with mental health, substance abuse and homelessness.
- **The Outdoor Experience:** offering an alternative treatment service through a range of outdoor intervention programs for young people aged 15 – 25 years, who have or have had issues with alcohol and/or other drugs.
- **Support After Suicide:** supporting people bereaved by suicide, including children and young people.
- **Western Sydney Program:** delivering social enterprise and other community building that provide affordable food, training and employment opportunities to people living in the area of Mount Druitt, Western Sydney.
- **Just Leadership:** Working in partnership with community and corporate enterprises to foster leadership for a just society. This includes the African Australian Inclusion Program, a professional bridging program developed in partnership with the National Australia Bank.
- **Capacity building** activities in the Northern Territory and NSW with Aboriginal communities to improve their situation and to have more control over their lives.

Research, advocacy and policy are advanced through our Policy Unit, coordinating across all program and major interest areas of Jesuit Social Services. Our Learning and Practice Development Unit builds the capacity of our services through staff development, training and evaluation, as well as articulating and disseminating information on best practice approaches to intervening with participants across our programs.

## The Enabling Justice ABI Project

The Enabling Justice project is a pilot being delivered in partnership by Jesuit Social Services and RMIT University's Centre for Innovative Justice. The project focuses on the over-representation of people with an acquired brain injury (ABI) in the Victorian criminal justice system and supports a self-advocacy group (the Justice User Group) to improve outcomes for this group of people. We undertake qualitative research and support the justice user group to conduct advocacy around this issue by drawing upon their own lived experience of ABI and the criminal justice system.

## Complex needs, disadvantage and disability – the context of people in the justice system

*Terms of reference addressed:*

*1.c) the differing needs of individuals with various types of cognitive and psychiatric impairments such as foetal alcohol syndrome, intellectual disability or acquired brain injury and mental health disorders.*

### Scope of the problem

Due to limitations in data collection, it is difficult to accurately identify the number of people with cognitive or psychiatric impairment in the justice system who are currently detained indefinitely.

What we do know is that people with cognitive impairment are over-represented in the justice system. Victorian statistics show that 42 per cent of male prisoners and 33 per cent of female prisoners have a confirmed Acquired Brain Injury (ABI) compared with 2 per cent of the general Australian population.<sup>1</sup> Across Australia, just over one third of prisoners have reported

People with mental health disorder and/or cognitive impairment are **3 to 9 times** more likely to be in prison than their non-disabled counterparts

having received a brain injury resulting in a loss of consciousness during their lifetime.<sup>2</sup> People with intellectual disabilities are also over-represented in the justice system, although not to the same extent as those with an ABI. An Australian study found that 12 per cent of the prison population had an intellectual disability and up to 30 per cent had a borderline intellectual disability.<sup>3</sup> In Victoria, only 3 per cent of the total prisoner population has an intellectual disability, however of this group, 25 per cent were under 25 years and 23 per cent were Aboriginal or Torres Strait Islander.<sup>4</sup>

Aboriginal and Torres Strait Islanders are particularly at-risk given their over-representation in the criminal justice system and amongst people with disabilities. Aboriginal and Torres Strait Islanders constitute 27 per cent of the prisoner population<sup>5</sup>, compared to 3 per cent of the general population, and are 1.7 times more likely to have a disability.<sup>6</sup>

### Cognitive impairments differ immensely

The term cognitive impairment is an umbrella term encompassing a range of conditions such as foetal alcohol syndrome disorder (FASD), intellectual disability, borderline intellectual disability and acquired brain injury (ABI). The characteristics of each vary and, therefore, the nature of the interaction and vulnerability in the justice system is experienced differently by those with different conditions. People who present with any of these conditions vary significantly, making a uniform response not only challenging, but ineffective.

#### ABI

##### *Characteristics*

Acquired Brain Injury (ABI) is broadly defined as an injury to the brain occurring after birth.<sup>17</sup> Acquired Brain Injury can be caused in variety of different ways and it is important to distinguish

<sup>1</sup> With the exception of FASD; nb: These figures reflect a large continuum of ABIs.

between Traumatic Brain Injury (TBI) and non-traumatic ABI. Traumatic Brain Injury is caused by external force, which can occur in a single event (such as a car accident) or as a result of a series of events (such as repeat concussions from falls or assaults). Non-traumatic ABI is caused by a lack of oxygen to the brain (hypoxia) as a result of a number of factors such as tumours, infections, strokes, drowning, drug overdose, long-term alcohol and drug misuse or suicide attempts.

There is less data available for people with non-traumatic ABI, making it likely that people with non-traumatic ABI are more likely to be undiagnosed, vulnerable and living without supports in the community.<sup>8</sup> According to one Victorian study, non-traumatic ABI is more common among those with an ABI in the prison system (with alcohol and drug use being the most common risk factor for developing an ABI) compared to the general population who are more likely to experience a traumatic brain injury<sup>9</sup>.

People with ABI can experience cognitive difficulties, including poor memory loss and concentration, reduced ability to plan and problem solve, inflexible thinking and difficulties with consequential thinking. They also can experience psychosocial and emotional issues such as depression, emotional instability, irritability, impulsivity, inappropriate behaviour and paranoia<sup>10</sup>. There is a spectrum of severity in terms of the impact on levels of functioning, and the presentation of ABI differs from person to person.

#### *Interaction with the justice system*

There is some evidence to suggest that there is a direct causal relationship between certain consequences of ABI and offending behaviour, however the nature of this relationship is complex and needs to be interpreted with caution. Swedish research found that some of the psychosocial behaviours associated with a brain injury correlate with offending behaviours.<sup>11</sup>

There is a lack of research on the relationship between low level non-violent offending and ABI (despite low level offending being a 'typical' type of offending amongst people with ABI).<sup>12</sup> However, as reported by Professor Williams from the University of Exeter<sup>13</sup>:

'Studies have shown that the rate of TBI is much higher in offenders compared to society as a whole. As well as much higher prevalence rates of TBI among prisoners, a recent Swedish study found that 8.8% of people with a TBI later committed a violent crime, compared with 3% of the general population. Young offenders with a history of TBI were 2.37 times more likely to commit a serious violent crime.'



Having an ABI can make people more at risk of involvement in the criminal justice system because of the disability itself (as opposed to heightened levels of offending)<sup>14</sup>. This is because the effects of a brain injury can make people vulnerable to manipulation and exploitation as an accomplice, more visible in public space, more likely to have their behaviour misunderstood and less able to negotiate

#### Case Study: the Enabling Justice ABI Project

Sam (not his real name) was sentenced to a term of imprisonment and sent to a maximum security prison. Sam has an Acquired Brain Injury. While Sam's brain injury is thought to have been acquired as a result of falling from a building when he was a teenager, he has experienced many risk factors for brain injury, including being assaulted and using alcohol since childhood. Sam was also diagnosed with a mental health condition. When Sam arrived at prison, the officers told Sam to go to the medical centre at a particular time in order to take medication for his medical health condition. Sam has memory problems as a result of his ABI, and forgot this information soon after being told. He eventually approached an officer the following day to ask about when he would get his medication, but was told that he should have attended the medical centre when he was told to do so. Another inmate of the prison overheard this conversation and started to tease Sam, and Sam punched him. This resulted in Sam being placed in isolation for several days, where his mental health condition deteriorated further.

the complexity of the justice system (e.g. not meeting order and parole requirements or understanding court proceedings makes them more vulnerable to violations)<sup>15</sup>. People with ABI can also be very compliant making them more susceptible to admitting guilt.

#### Intellectual Disability

##### *Characteristics*

Intellectual disability is a developmental disorder that can be a result of genetic conditions, problems during pregnancy or at birth, health problems or environmental factors<sup>16</sup>. People with intellectual disability often have difficulty learning new things, understanding complex ideas and abstract concepts, understanding social rules, problem solving, decision-making and concentrating for long periods of time. Like ABI, intellectual disability is experienced in different ways with levels of functioning varying from person to person.

##### *Interaction with the justice system*

People with intellectual disabilities are more susceptible to interaction with the justice system compared to the general population, both as victim and perpetrator.<sup>17</sup> Having an intellectual disability can make people susceptible to breaching orders because of their level of functioning. For example, people with an intellectual disability could be charged with a sex offence with harsh order conditions because they failed to recognise, due to their level of functioning, that their consensual partner was underage. Intellectual disabilities can also make people more vulnerable in peer groups and susceptible to peer pressure. According to one NSW study, the most significant driver of offending in people with intellectual disabilities is a lack of support services, including specialist disability services, housing support and drug and alcohol services.<sup>18</sup> People within this group may also be very compliant, which makes them susceptible to admitting guilt.

## Foetal Alcohol Spectrum Disorder

### *Characteristics*

Foetal Alcohol Spectrum Disorder (FASD) is an umbrella term that encompasses disorders that develop as a consequence of foetal exposure to alcohol.<sup>19</sup> Alcohol exposure to a foetal brain impacts its structure and function. It is estimated that FASD affects 2 per cent of Australian babies.<sup>20</sup> While people with FASD will present with different characteristics, they can experience difficulties with memory, attention span, retaining information, reasoning, understanding cause and effect, controlling their behaviour and social relationships.

### *Interaction with the justice system*

While the link between FASD and involvement with the justice system is relatively under-researched in Australia, international statistics show that:

- Individuals with FASD are 19 times more likely to be imprisoned than individuals without FASD<sup>21</sup>
- 23 per cent of those remanded for committing a criminal offence had a FASD<sup>22</sup>
- 14 per cent of children, 60 per cent of adolescents and 60 per cent of adults with FASD had involvement with the justice system. Thirteen per cent of these children, 67 per cent of these adolescents, and 87 per cent of these adults were actually charged, arrested and/or convicted<sup>23</sup>

People with FASD are vulnerable in the justice system because their impairment can make court proceedings difficult to follow, they have a tendency to be compliant when faced with confusing processes<sup>24</sup>, and they are more likely to be refused bail. Imprisonment can also be ineffective for people with FASD due to their difficulty in determining the link between actions and consequences. This means that prison can fail to deter a person's future offending and may lead to confusion about why they are being incarcerated. Oral language deficits, mistaken for deliberate non-compliance, can also see people with FASD spending lengthy periods in solitary confinement.

### People with cognitive impairment have complex needs

The justice system is not effective in identifying and responding to the unique and complex characteristics of people with cognitive impairment.

People with cognitive impairment can often experience more than one disability. Of Australians under 65 years with an ABI, 42 per cent had a psychiatric disability, 39 per cent had a sensory or speech disability and 29 per cent had an intellectual disability.<sup>25</sup> The prevalence of cognitive impairment with other health conditions amongst people in the justice system has also been noted by a number of other studies in Australia.<sup>26</sup>

These characteristics often overlap in complicated ways to profoundly influence people's interactions with the criminal justice system. NSW researchers found that 69 per cent of a sample of prisoners with cognitive impairment had multiple and complex needs.<sup>27</sup> Compared to those without complex needs, people in this group were more likely to have had earlier contact with police, be victims as well as offenders, have been clients of juvenile justice, and have had more police and

prison custody episodes over the course of their lives.<sup>28</sup> A greater portion of Aboriginal people in this study had multiple and complex needs as well as greater numbers of interactions with the criminal justice system.<sup>29</sup>

### Social disadvantage and disability

People with cognitive impairment in the justice system often come from communities of entrenched disadvantage. A series of research studies commissioned by Jesuit Social Services (undertaken by Professor Tony Vinson) shows that a high proportion of crime comes from a small number of localities.<sup>30</sup> These communities are characterised by entrenched and overlapping disadvantage across a range of indicators.

In the latest *Dropping off the Edge 2015* report, high rates of disability and mental health issues coincide with high rates of crime and prison admissions as well as a range of other overlapping indicators.<sup>31</sup> This report highlights that the most disadvantaged localities across a number of Australian jurisdictions experience a striking degree of disadvantage. The web of disadvantage in these communities is characterised by high rates of domestic violence, child maltreatment, low levels of educational attainment and long term unemployment (see Appendix 1 for more information).

The overlay of intergenerational trauma is a significant factor for Aboriginal communities. As highlighted in the Steering Committee for the Review of Government Service Provision's *Overcoming Indigenous Disadvantage 2014*<sup>32</sup> report:

"Disadvantage may have both immediate social, economic and cultural determinants, and deeper underlying causes. For example, the relatively high rates of violence in Aboriginal and Torres Strait Island communities are influenced by immediate factors such as alcohol and illicit drug use, mental health issues and childhood experience of violence. However, a number of researchers also suggest that deeper underlying causes include 'intergenerational trauma' resulting from the ongoing and cumulative effects of colonisation, loss of land, language and culture, the erosion of cultural and spiritual identity, forced removal of children, and racism and discrimination."

The impact of cognitive impairment can also generate or compound disadvantage. For example, people who develop an ABI can experience consequences such as loss of employment and changes in their sense of identity, meaningful participation in society, relationships and financial security. People with ABIs can often experience trauma and loss, contributing to elevated levels of mental illness.<sup>33</sup> This is often exacerbated by insufficient services and support, social isolation and community prejudice.<sup>34</sup> While not all people with a cognitive impairment experience disadvantage, its effects can make an individual more vulnerable to the risk factors associated with social disadvantage.

### Indefinite detention is a punitive response to society's most vulnerable

Jesuit Social Services is deeply concerned by the arbitrary detention of people with cognitive impairment who are found unfit to plead. The failure to provide adequate accommodation and support services and the arbitrary nature of detention constitutes an abuse of human rights. We support the Australia Human Rights Commission's recommendations in its recent publications on this issue<sup>35</sup>.

Often people with cognitive impairment experience even harsher punishments due to the justice system not catering for their disability or the disability failing to be identified and being mistaken for disobedience. People with cognitive impairment should have equality before the law and not be discriminated against by a system that fails to identify their support needs.

Responses to offending by people with cognitive impairment should identify the underlying causes driving the behaviour and provide a therapeutic response that meets their needs and effectively prevents reoffending. People found unfit to plead due to cognitive impairment should be placed in therapeutic, community-based environments with intensive support to prevent further contact with the justice system, including appropriate supervision if required.

**Recommendation 1: The detention of people with cognitive and psychiatric impairment should be used as an absolute last resort, once all other options have been considered.**

## Impact of legislative settings

*Terms of reference addressed:*

*1.d) the impact of relevant Commonwealth, state and territory legislative and regulatory frameworks, including legislation enabling the detention of individuals who have been declared mentally-impaired or unfit to plead.*

This section focuses specifically on the Northern Territory.

Legislation in the Northern Territory fails to adequately protect and accommodate people with cognitive and psychiatric impairment.

Current legislation in the Northern Territory does not protect people with cognitive impairment charged with lower level crime. Although there are legislation and schemes in the lower courts (i.e. Court of Summary Jurisdiction) that “may be relevant to a person with a cognitive impairment, unfortunately most of these schemes focus on the needs of people with a mental health problem, which are generally quite different to the needs of cognitively impaired people”.<sup>36</sup>

Implications of not adequately providing for cognitive impairment under this legislation nor other schemes may be significant. People with cognitive impairment are either dealt with in the Court of Summary Jurisdiction (receiving the same treatment as any other person and therefore not having their unique needs and circumstances taken into account) or they may have their cases dealt with by the Supreme Court under Part IIA of the *Criminal Code*. The *Criminal Code Act* stipulates that the Supreme Court must decide whether someone found not guilty due to mental impairment<sup>2</sup> is either liable to supervision (custodial or non-custodial) or can be released unconditionally. Unfortunately, people are rarely released unconditionally, and the lack of appropriate facilities in the NT to house people on custodial supervision orders invariably sees people with cognitive disabilities indefinitely detained.<sup>37</sup> In 2012, the Aboriginal Disability Justice Campaign found that all of the nine people who were on a supervision order due to mental impairment were Aboriginal.<sup>38</sup>

<sup>2</sup> ‘Mental impairment’ in the Act includes ‘senility, intellectual disability, mental illness, brain damage and involuntary intoxication’

Furthermore, the wording of the *Mental Health and Related Services Act* confers only discretionary power on the court in regards to requesting a certificate from the Chief Health Officer, based on the opinion of the court as to whether a person may require treatment or care (s73A (1)(b) and s77(2)). This requires awareness of and ability to identify the often subtle signs of cognitive and psychiatric impairments by people who are unlikely to have had specialised training in this area.

This is compounded by mandatory sentencing in the Northern Territory, which has serious implications for people with cognitive and psychiatric impairment. Mandatory sentencing (under the *Sentencing Act*) significantly limits the court's ability to take a person's disability into account in determining an appropriate sentence. For relevant offences, the court can no longer take account of a symptom of disability (such as poor impulse control) as a contributing factor in offending. Nor can the court consider the particular impact of imprisonment on a person with a disability.

Jesuit Social Services opposes mandatory sentencing, which imposes unnecessary restrictions on judicial discretion. Mandatory sentencing negates the ability of the court to take individual circumstances into consideration. This often has a greater impact upon vulnerable groups such as people with cognitive and/or psychiatric impairment. Mandatory detention has not been shown to deter people from committing crimes – particularly where people may have issues such as poor impulse control.

Moreover, the *Bail Act* (NT) does not include provisions for people with cognitive and/or psychiatric impairment. The Act is unnecessarily restrictive and punitive and often impacts upon people with cognitive and/or psychiatric impairment, who find it more difficult to obtain bail. Central Australian Aboriginal Legal Aid (CAALAS) and the Northern Australia Aboriginal Justice Agency (NAAJA) have made comprehensive recommendations for review and amendment of the *Bail Act*, which we commend to the Inquiry.

The *Criminal Code Act* (NT) is in need of particular review given that it is under this legislation that a person may be considered unfit to plead. The Criminal Code should be amended to replace indefinite supervision orders with limited terms, or at the very least, to include regular reviews of the person's term with legal representation of the person. Where a person has been deemed unfit to plead due to cognitive and/or psychiatric impairment, it would be generally preferable in most cases to have the matter dealt with outside of the criminal justice system (except in particularly serious cases, where this approach may be appropriate). Both NAAJA and CAALAS have published several papers pertaining to this issue and we would highly recommend these to the Senate Inquiry.

**Recommendation 2: Amend the *Mental Health and Related Services Act* to further differentiate between the needs of people with cognitive impairment and psychiatric impairment. The Act needs to explicitly cover not only people with 'mental impairment' and 'mental disturbances', but also people with cognitive impairment.**

**Recommendation 3: Amend Part IIA of the Criminal Code Act to include regular reviews of a person's term and introduce limiting terms rather than indefinite supervision orders. The Code should also be reviewed to determine whether people found unfit to plead should be dealt with outside of the criminal justice system.**

## Meeting the needs of people with cognitive impairment

### *Terms of reference addressed:*

*1.f) the capacity of various Commonwealth, state and territory systems, including assessment and early intervention, appropriate accommodation, treatment evaluation, training and personnel and specialist support and programs.*

It has become clear from our experience working in the Victorian justice system and with communities in the Northern Territory that the justice system does not easily adapt and respond to the needs of people with cognitive impairment. In particular, there are obvious inconsistencies in the identification and assessment of people with cognitive impairment as well as inadequate facilities to support people with cognitive impairment in the prison system.

### Identification and Assessment

A lack of data collection and inconsistent and inadequate identification and screening tools has made it difficult to understand the true extent of people with cognitive impairment in the justice system.

In the Northern Territory, there is a serious lack of screening and diagnostic tools, which means there is no definitive data on the number of people with cognitive impairment and mental health issues in the criminal justice system. The 2008 Northern Territory Ombudsman's report confirmed the absence of both qualitative and quantitative data to indicate the levels of cognitive impairment and mental health amongst prisoners<sup>39</sup>. However, anecdotal evidence indicates that there is a disproportionately high level of cognitive impairment experienced by those in the justice system – statistics that are reflected in other Australian jurisdictions<sup>40</sup>. It has been acknowledged that there is a high rate of FASD in the Northern Territory, and there is a growing body of evidence highlighting the prevalence of FASD in people in the justice system<sup>41</sup>.

Through our work in the Northern Territory, Jesuit Social Services is concerned that a high number of people with FASD are presenting to the justice system, many of whom are recidivist offenders. Given the high numbers of people in the prison system in the Northern Territory for violent crimes, and the fact that ABI is often linked to impulsivity, it is likely that a significant number of the prisoner population would have an ABI. The absence of adequate screening tools means that people with cognitive and psychiatric impairment are at a high risk of re-entering the justice system without receiving the crucial support they need, including interventions to reduce reoffending.

In Victoria, data collection and identification systems are more extensive. In Victorian legislation, mental illness and intellectual disability are both recognised in specific sections of the *Sentencing Act 1991*, which provides specific sentencing options for these conditions. However, there is a lack of specific legislation for ABI, highlighting the continued lack of recognition and understanding of the full spectrum of disability in the criminal justice system.<sup>42</sup>

According to the recent Victorian Ombudsman's report on the reintegration and rehabilitation of prisoners, Victoria has a screening tool available however it is used inconsistently with prisoners with a possible impairment or disability.<sup>43</sup> The report found that the lack of routine screening meant that the responsibility for the assessment of ABI often fell to prison staff who do not have the appropriate skills or knowledge in this area.

Identifying ABI at the earliest stage possible is critical to ensuring those with an ABI receive the support they need; when this does not happen this puts them at a heightened risk of cycling in and out of the justice system. There is also often a lack of processes to identify those with an ABI at the stage of first contact with police, which can exacerbate communication issues during police interviews.<sup>44</sup>

The added challenge with identification and assessment of ABI is its hidden nature. ABI can be difficult to detect due to the fact that it develops over a person's lifetime and does not always effect every aspect of a person's level of functioning. In some cases, the deficits in function can be mistaken for personal traits, such as poor memory, fatigue, and irritability at being mistaken for being unintelligent or unco-operative.<sup>45</sup> This lack of awareness amongst professionals in the justice system compounds the negative impact of the justice system on someone with an ABI.

Many people with cognitive impairment mask their disabilities in order to 'survive'. For people who end up in a mainstream prison setting, downplaying or hiding their disability is often key to avoiding bullying and harassment from other prisoners. Cognitive impairments can also be concealed by other factors, such as overlapping mental health problems or drug and alcohol abuse. Not only does this make detection processes more challenging but also means that individuals themselves may not be aware of their own disability<sup>46</sup>.

**Recommendation 4: Developing specialised assessment tools for cognitive impairment at all stages of the justice system. These tools should cater for the needs of Aboriginal people.**

[Support for people with cognitive disabilities in prison should be universal](#)

While there are some good models of support for people with cognitive disabilities in the justice system, access to appropriate treatment and support is limited.

In Central Australia, the Alice Springs Correctional Centre (ASCC) is chronically overcrowded and offers a poor therapeutic environment. There are limited opportunities for therapy and counselling, with the ASCC no longer providing rehabilitation and treatment services such as the Violent Offenders and Sexual Offenders program. Prisoners in Alice Springs are required to apply to transfer to the new Darwin facility to receive this type of support. This further isolates them from family.

We note that these types of programs are often targeted at a broad cohort, and further research and expertise is required to determine their effectiveness for particular cohorts (including people with cognitive or psychiatric impairment).

It is our understanding that at present in Alice Springs an unwillingness to be transferred to Darwin to access treatment services is viewed as a refusal to undergo treatment. Furthermore, these prisoners will be unlikely to be eligible for parole, which means that when they are released it will be without supervision and other parole conditions (including linking in with support services) as they

**Case study: interviews from the  
Enabling Justice ABI project**

"...when I used to go to court, before (the ARC List), outside the magistrates court... I'd go out for a smoko... because...I wasn't game... I didn't want, like some of the judges the way they'd treat you, and the way they'd talk to you, like 'well you should have a bit more brains!'"



will have served their full term. Consequently, people who do not receive rehabilitation and treatment while incarcerated are at a higher risk of reoffending upon release.

Current resources for people with psychiatric and cognitive impairment in the ASCC are limited to a psychiatric nurse and fortnightly visits from a Darwin psychiatrist. Therapeutic approaches for people with acute needs appear to be over-reliant on medical (i.e. chemical) interventions, with little focus on other interventions.

In Victoria, while efforts have been made to ensure the justice system is more responsive to those with a disability through the *Corrections Disability Framework*, significant issues remain in relation to identifying and supporting people with a disability. Of particular concern to Jesuit Social Services is the significant number of people with ABI in the justice system, and the skills of staff within justice and correctional settings to effectively communicate with and support them. The recent Victorian Ombudsman's report also highlighted issues with staff training, whereby "staff were 'set up to fail' if they were not adequately trained, and that this only results in both the prisoner and staff member getting frustrated, leading to a potentially volatile situation".<sup>47</sup>

Of equal concern is the limited capacity within the Victorian justice system to provide therapeutic environments for people with cognitive disability. The Marlborough Unit at Port Phillip Prison is the largest specialist unit with 35 beds. It caters predominantly for people with intellectual disability, but also has some people with ABI.<sup>48</sup> The Marlborough Unit provides a range of program activities and support to prisoners to provide a therapeutic environment for their rehabilitation. The Victorian Ombudsman's report highlighted the inadequacy of beds to meet demand (i.e. up to 95 people with intellectual disability at any one time). Other prisons in Victoria are significantly more limited in their capacity to support people with cognitive impairment. The lack of specialised placement options in the Victoria prison system not only results in inadequate treatment and support, but is a safety issue.

It is critical that correctional staff receive training and support to build awareness and expertise to respond the distinct needs of people with cognitive and psychiatric impairment, and drive better therapeutic outcomes for this group.

**Recommendation 5: Ensuring more specialised options within prisons are available for sentenced people with cognitive disability that, where possible, prevent displacement from family and primary care givers.**

**Recommendation 6: Ensuring all relevant staff in the justice system receive adequate support and training to enhance their awareness and understanding of cognitive impairment.**

#### [Alternatives to prison for those found unfit to plead](#)

There is a concerning lack of alternative accommodation options for people with cognitive impairment who are found unfit to plead in Central Australia. Since 2013 a secure care facility has been available for adults who are deemed unfit to plead but are still considered to be a risk to themselves or the community. This new facility, however, has capacity for 8 people only, after half of the 16 beds were reallocated for assessment purposes under the mandatory alcohol treatment scheme.



Jesuit Social Services is deeply concerned by this situation, and the likelihood that someone will be displaced to the Mental Health and Behavioural Management Facility in Darwin or housed in Alice Springs Correctional Centre (ASCC) when the secure care facility has reached capacity. Being at a considerable distance from a person's community is counter-productive to rehabilitation, particularly for people with cognitive impairment who require the support of a primary care giver. Being detained in prison can be highly detrimental to people's mental health and they are unlikely to receive the intensive support needed for their rehabilitation.

In Victoria, a person found unfit to plead due to cognitive impairment or psychiatric impairment, but who is considered a risk to themselves or the community, is placed in the Marlborough Unit at Port Phillip Prison or at Thomas Embling. Both have limited capacity and are not meeting demand.

**Recommendation 7: Providing alternative rehabilitative responses in the community for people found unfit to plead that provide intensive support and connection to family and primary care givers.**

**Recommendation 8: Establishing more secure facilities for unsentenced, high risk individuals (outside of the prison environment) which support their rehabilitation and transition into the community.**

#### [The need for early intervention to avoid later contact with the justice system](#)

In Central Australia, there are multiple opportunities to identify and support people with cognitive and psychiatric impairment from neo-natal screening, through to the child protection system, the education system, community and public health services and the justice system. Early warning signs are missed and not acted upon. The often siloed nature of the service systems, in terms of resourcing and service delivery, works against the holistic care needed for people with complex needs, leading to the involvement with the justice system and homelessness.<sup>49</sup> People with complex needs do not have access to comprehensive services, needing more than one service but crossing the boundary of many and therefore, decreasing the likelihood of engagement.<sup>50</sup> People with cognitive impairment are significantly more likely to enter the justice if they are not linked in with support services. There is a need for cross-jurisdictional and departmental reporting, as well as an integrated approach that is responsive to diverse individual and cultural needs.

Engagement with support services is further exacerbated for Aboriginal people due to significant levels of distrust of government services.<sup>51</sup> Past experiences of racism and family trauma has had a deep negative impact on people's access to services.<sup>52</sup> While there is a clear preference by most Aboriginal people to access Aboriginal controlled services, there are resourcing as well as privacy issues relevant to small towns.<sup>53</sup>

In regards to FASD in Central Australia, the key to reducing the prevalence of FASD is to inject resources into early intervention and early childhood services. Education and support programs for young women nearing child-bearing age are required. Where FASD has been diagnosed, it is crucial to provide therapeutic support for the child during the first three years of their lives to improve their outcomes and help to effectively manage this life-long condition. There is an urgent need for specialist treatment and management facilities in Central Australia if we are to avoid people with FASD coming into contact with the justice system.

**Recommendation 9: Reforming service systems to ensure early identification and intervention through holistic, integrated and culturally appropriate community-based services.**

**Embedding therapeutic, trauma-informed and restorative approaches to working with people in the justice system**

While the Marlborough Unit provides a positive example of therapeutic work with people with cognitive disabilities, access to this unit is limited. It is imperative that therapeutic approaches to working with people with cognitive impairment in the justice system are adopted to prevent reoffending and address the underlying complex needs of individuals.

A more strategic approach to planning and resourcing programs and services in prison is needed to ensure that effective and evidence-based programming and practice is embedded across the corrections system. This approach should be based on emerging research on supporting people with cognitive impairment to prevent further contact with the justice system. This research stresses six central themes:<sup>54</sup>

- Approaches to intervention must accommodate and explore issues of identity, diversity and culture
- The development and maintenance not just of motivation but of hope should be key tasks for workers
- Relationships are important, not just between workers and offenders but also between offenders and those who matter to them
- Offenders have strengths and resources that can support their rehabilitation
- Interventions need to encourage and respect self-determination, to work *with* offenders not *on* them
- Interventions should work on human *and* social capital

Implementing these principles must involve strengthening therapeutic approaches across correctional settings in Australia. Therapeutic approaches focus on bringing about behaviour change by facilitating personal development, vocational skill building, counselling and supporting people to access multiple coordinated services. Research into programs working with people in prison has found that those with a therapeutic philosophy were found to be notably more effective than those with a punitive and control focused philosophy.<sup>55</sup>

**Recommendation 10: A framework for planning and resourcing therapeutic programs and services targeting people with cognitive impairment should be developed and implemented throughout the corrections system.**

## People with cognitive impairment face barriers accessing the law

*Terms of reference addressed:*

*1.h) access to justice for people with cognitive and psychiatric impairment, including the availability of assistance and advocacy support for defendants.*

Facing confusing court processes with little support

People with cognitive impairment face a number of barriers in court settings, many of whom receive little support negotiating these challenges.

Communication issues are a common barrier for people with cognitive impairment. Due to functioning deficits, court processes can often be difficult to follow:

### Case Study: The Enabling Justice ABI Project

“The judges throw around big words... you know, I’m thinking what the shit is she on about. But I’d say to the bloke next to me, the lawyer, what did she mean by any of that. Well he says this is what happened... you just got to pull your head in... it’s more confusing than scary cause to the extent like what the hell are they on about, but once my solicitor whispered in my ear and said, this is just the way it is, just break it down into easier sentences for you”

Issues with memory can also make court confusing for people with ABI:

### Case Study: The Enabling Justice ABI Project

“That’s another thing with an acquired brain injury is remembering things and keeping track and when it comes to the law, if you don’t understand the law real well, you don’t, you can’t defend yourself properly, you can’t ask you lawyer to do this or that. You’re just sitting there like this. You know?”

A lack of comprehension can be further exacerbated by feelings of nervousness and anxiety about what is happening:

### Case Study: The Enabling Justice ABI Project

“The things I hear are very dismissive, in the court. It’s real heavy. Real heavy on your brain. And you try to listen, by the time you understand what’s been said, something else has been put in front of you... the whole time I was there, I’m thinking ‘I’m getting locked up here’ and the words just went straight over my head...Because I was nervous and they speak too quickly. It’s like you’re playing catch up all the time. Like I said before, they ask you one question and by the time you understand that question, they’ve rattled off another one.

Barriers to participating in court proceedings can result in compliance (admitting guilt) as a result of feeling intimidated. Undiagnosed cognitive disabilities also see people treated more harshly in the justice system, with the individual having reduced capacity to defend themselves. Negative experiences of court can also contribute to further offending, such as charges of failing to appear while on bail.<sup>56</sup>

It is important that therapeutic and problem-solving approaches are used in courts to more effectively engage people with cognitive disability. Clear communication is required to foster procedural fairness and encourage practices that genuinely engage people in the court process (e.g. presenting visual information with simple language to improve understanding).

An effective example of an effective specialist court is the Assessment and Referral Court (ARC) List in Victoria. This court adopts a problem-solving approach and includes specialist staff to support people with mental illness and/or cognitive impairment. The court aims to address the underlying drivers of the behaviour and link people in with support services. The Victorian Ombudsman's report found that the ARC List has an investment benefit of between \$2 and \$5 for every dollar when compared to imprisonment.<sup>57</sup> The most common outcome for those who successfully complete the program is the charges are dismissed. However, in order to access the ARC List, not only must the cognitive impairment be identified, but also it is often left to the lawyer to argue for special circumstances, making access to this court inconsistent.

The Northern Territory Government recently announced that three new mental health court liaison officer positions in the Top End and Central Australia would be delivered as part of new Mental Health Clinicians in Courts initiative<sup>58</sup>. While the provision of mental health assessment and information to clients going through the courts system is a welcome initiative, Jesuit Social Services notes that this needs to be adequately resourced and should be extended to cover people with cognitive impairment.

**Recommendation 11: Ensuring that all people with cognitive impairments can access specialised, problem-solving programs at courts. This should be underpinned by consistent screening referral processes. Specialised problem-solving courts, such as the ARC List, should be adopted in the Northern Territory.**

### Independent advocates have a key role to play

Independent advocates play an important role in supporting people with disabilities by ensuring they are not disadvantaged by their disability and that an individual's needs are met. In Victoria, an Independent Third Person (ITP) supports individuals with cognitive impairment through police interviews whether they are a suspect, victim or witness. The ITP helps individuals communicate with police and also explain people's rights and important information. While the ITP is an asset to the Victorian justice system, advocacy for the individual can be absent or ineffective at other stages of the justice system. Staff at Perry House, Jesuit Social Services' supported accommodation program for young people with an intellectual disability exiting the justice system, for example, have often played an advocacy role for participants to ensure services take a person-centred approach rather than being process driven.

Issues also arise in terms of independent advocacy when no formal diagnosis of the disability has been made.

#### Case Study: The Enabling Justice ABI Project

“Only after my last offence have I ever got an ITP. So everything prior, I went to court about once a year, every year, since I’ve been 16 years old... It [having the ITP] changed the ways the police asked the questions. I think they were a lot more softer, softly spoken. Rather than in an interview room by yourself with a police officer and he’s very daunting. Knowing that you had an independent third person there, you realise yourself that you’re not capable of answering the questions correctly. So you’re very slow on answering, double checking, saying to the person, ‘Is this what they said? Is this what they want to know?’ as you get very daunted.

**Recommendation 12: Ensure people with a cognitive impairment have access to an Independent Third Person at key stages of their engagement with the justice system.**

## Using diversion to prevent recidivism

*Terms of reference addressed:*

*1.i) the role and nature, accessibility and efficacy of programs that divert people with cognitive and psychiatric impairment from the criminal justice system.*

Restorative justice practices and programs have increasingly been adopted in justice and corrections systems worldwide. Restorative approaches seek to hold the offenders to account for their actions and to provide them with the opportunity to restore their broken relationship with the victim, the community and in many cases, their own family. The approach is widely utilised, particularly among youth justice systems (e.g. youth justice group conferencing). For people with cognitive impairment, restorative justice provides opportunities for an individual to understand their behaviour in the context of their disability, as well as linking in with important support services.

The creation of diversion programs targeting people with cognitive impairment at a pre-plea or pre-sentence stage could prevent people entering prison and experiencing isolation from community connections and primary care givers, as well as preventing the harm that many people experience in prison. Diversion programs have the capacity to more effectively prevent further reoffending, by addressing the risk factors that contribute to a person’s involvement in the justice system. While this is yet to be trialled in the adult system with people with cognitive disabilities in Victoria or the Northern Territory, evidence in the youth justice system demonstrates its potential:

*Youth Justice Group Conferencing:* Over 80 per cent of participants had not reoffended after two years<sup>59</sup>

*Compared to youth detention:* Over half of young people who had been in youth detention went on to re-offend<sup>60</sup>

**Recommendation 13: Developing an evidence base to determine the effectiveness of pre-plea and pre-sentence diversion for people with cognitive impairment in the justice system.**

## A staged transition to community

### Staged release

The current arrangements for release on parole or straight release for the vast majority of people exiting prison need to be reformed and replaced, wherever possible, with a process of staged release into the community.

The Enabling Justice ABI Project identified that participants can experience shock and stress exiting prison and are particularly isolated, factors which can contribute to further offending. Participants in Victoria have been left in solitary confinement for extended periods of time due to their cognitive impairment being undetected and their behaviour misunderstood. If they are released from prison after spending a significant amount of time in isolation, people can often find it difficult to cope with the transition.

Developing an ABI can see people become distant from their family. Family members may find it difficult to cope with the changes in the person to do with their behaviour and memory loss. Periods in prison can also create distance between an individual and their primary care giver. People with cognitive disabilities who are involved in the justice system are often not linked in to mainstream disability services, which can further exacerbate their isolation and contribute to their involvement in the justice system. Staged release should be planned to help people link in with disability and housing support services, as well as rebuild their relationships with their primary care giver(s) and support network.

The Judy Lazarus Transition Centre offers an effective example of staged release in the Victorian justice system, which aims to improve employability, develop living skills and re-establish community and family ties.<sup>61</sup> The recidivism rate for prisoners in the Judy Lazarus Transition Centre is substantially lower than the overall prisoner population: 10 per cent compared to 44 per cent.<sup>62</sup> This model is being used or adapted on a wider basis in other jurisdictions worldwide.

Jesuit Social Service's Reconnect program is another positive example of intensive post-release transitional support. As shown below, around one quarter of Reconnect participants have some form of cognitive impairment.

### **Jesuit Social Services Reconnect Program: Corrections Victoria Reintegration Pathway**

Our ReConnect program supports high risk and high profile men and women to transition from prison to community.

ReConnect provides targeted (up to four weeks) and intensive (up to 12 months) reintegration outreach services for serious violent or sex offenders, Aboriginal and Torres Strait Islander, women prisoners, and prisoners with high transitional needs.

ReConnect aims to:

- create individual transition plans for people exiting prison
- provide assertive outreach and practical assistance to people exiting prison
- assist people exiting prison to address the underlying causes of their offending
- facilitate community reintegration and reduce re-offending

Participant profiles:

- 64% have a diagnosed mental illness
- 24% have some form of cognitive disability
- 70% have a current or a history of alcohol and drug abuse
- only 14% have completed education to Year 12 or equivalent

At this stage ReConnect is targeted at high-risk offenders, which includes people with cognitive or psychiatric impairment. However, given the complex presentations of this group and the specific challenges involved in rehabilitation, there is scope to broaden the service offering to respond to the distinct needs of this cohort.

**Recommendation 14: A staged approach to release from custody should be developed for people with cognitive and psychiatric impairment, involving day release to build connections to community and links with support services.**

#### **Supported accommodation and housing**

There is a serious lack of supported accommodation options for people with cognitive impairment. We know that 40 per cent of Australia's prisoners exit custody into homelessness,<sup>63</sup> and that those with complex needs experience greater homelessness and housing disadvantage.<sup>64</sup> For people with complex needs, homelessness is both a trigger and compounding factor in contributing to involvement in the justice system.

Safe, affordable and supported housing is fundamental to people's ability to get their lives back on track. It is therefore vital that housing issues are resolved prior to prison release. The combination of housing and intensive support is crucial for people with cognitive impairment, providing the security and stability of housing with the intensive support needed to help individuals develop independent living skills and networks of support. Ideally, people with cognitive disabilities exiting prison would spend a period of time in supported accommodation to build their independent living skills and

connection to the community before transitioning on to further stable housing where they can continue to access support.

Jesuit Social Services' Perry House offers one such model of supported housing. It provides housing and one-on-one support to people aged 17 – 25 years with an intellectual disability who are exiting the justice system and at-risk of homelessness for up to 12 months. Perry House, a four bedroom house, is staffed 24 hours per day and supports people to develop independent living skills through a

#### Participant Feedback on Perry House

"My behaviour was linked to respect. Interaction is the most important thing. Positive engagement."

"If it was not for Perry House my house would be a pigsty, they taught me hygiene and structure around the house, by getting me to clean up they made me realise I don't like mess. Now I clean up around the house and do washing."

"Wish I could have had more time, I wish I had spent more time here when I was a resident. My advice to new residents is to spend as much time engaging when you can"

"I really liked it here (Perry House), wish I was still here. I miss this place like crazy"

range of activities. Like other supported housing options, demand is high, with only one out of five referrals being accepted. Appendix 2 contains two detailed case studies from Perry House.

**Recommendation 15: Preventing homelessness among people with cognitive disabilities exiting prison by developing a cooperative approach with housing services with a specific focus on the needs of people with cognitive or psychiatric impairment, and/or complex needs.**



## Appendix 1

Jurisdiction	Those living in the 3% most disadvantaged localities <sup>3</sup> in the state are:
NSW	<ul style="list-style-type: none"> <li>• 3.6 times as likely to have spent time in prison</li> <li>• more than 3 times as likely to be experiencing long term unemployment</li> <li>• nearly 3 times more likely to have a low level of education and/or have suffered domestic violence</li> <li>• twice as likely to have a disability or significant mental health problem.</li> </ul>
VIC	<ul style="list-style-type: none"> <li>• 3 times more likely to be experiencing long term unemployment or have been exposed to child maltreatment</li> <li>• 2.6 times more likely to have experienced domestic violence</li> <li>• 2.4 times more likely to be on disability support</li> <li>• twice as likely to have criminal convictions.</li> </ul>
QLD	<ul style="list-style-type: none"> <li>• more than 8 times as likely to have criminal convictions and more than 6 times more likely to have juvenile convictions</li> <li>• nearly 5 times more likely to be disengaged from education or employment as young adults</li> <li>• over 4 times as likely to have suffered domestic violence or child maltreatment, and to have a low level of education</li> <li>• more than twice as likely to have a disability or have been unemployed for a lengthy period.</li> </ul>
SA	<ul style="list-style-type: none"> <li>• 10 times as likely to have spent time in prison</li> <li>• more than 5 times as likely to be unemployed or have a low level of education</li> <li>• more than twice as likely to have a disability</li> <li>• 3.5 times as likely to be dealing with mental health problems.</li> </ul>
WA	<ul style="list-style-type: none"> <li>• roughly eight times as likely to have spent time in prison</li> <li>• six times as likely to have been unemployed for a lengthy period</li> <li>• around five times more likely to have a low overall level of education, or to be disengaged from education or employment as young adults</li> <li>• more than three times as likely to have a disability</li> <li>• two-and-a-half times as likely to have suffered child maltreatment.</li> </ul>

Source: Vinson T 2015, *Dropping Off the Edge 2015*, Jesuit Social Services and Catholic Social Services Australia, Melbourne.

<sup>3</sup> Locality refers to postcode, Local Government Area or Statistical Local Area.

## Appendix 2

### PERRY HOUSE - CASE STUDY 1

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#### Background Information

Participant is a male of Cambodian descent who came to Australia as a refugee with a history of trauma and violence. He entered Perry House as a 20 year old directly from custody at Malmsbury Youth Justice Precinct as the result of an extensive criminal history related to substance abuse, homelessness and negative peers. He had been assessed as having an IQ of 65<sup>4</sup> and suffering Post Traumatic Stress Disorder.

#### Presenting Issues

Participant had been using methamphetamines and opiates intravenously since he was 14 years old (self-reported) and informs he attended a residential rehabilitation centre at the age of 17. He identified that offending and homelessness were significant factors associated with his drug and alcohol use.

Participant reported that 'ice', heroin and cannabis were his drugs of choice and that prior to being incarcerated he was using 'ice', heroin and cannabis daily. Participant identified that he needed support with substance use and wanted to continue engaging with community services (Youth Support and Advocacy Service) to address his substance misuse. As part of his treatment plan, the participant was prescribed Suboxone to address heroin use.

#### Mental Health/Disability

At Perry House, the participant presented as positive and engaging however often expressed feeling withdrawn and 'down', frustrated, and depressed. Participant advised that whilst incarcerated he did not engage with Malmsbury health teams regarding his emotional state and staff confirmed that due to a restructure within Malmsbury, there has been a lack of services to support the participant with his needs.

When first at Perry House he often self-harmed by cutting his arms, which was consistent with the participant being unable to express his emotions. When participant harmed he always alerted staff and advised staff that he had no suicidal ideation past or present.

At times he could become aggressive when unable to express emotions and indicated he would like support to manage his aggression. Participant was reported to have stated 'I black out when I get angry'.

Whilst at Perry House, the participant was referred to the Connexions Program (Jesuit Social Services Program) for ongoing counselling and outreach support, specifically around his dual diagnosis presentation.

#### Family

Participant had minimal contact with his mother due to a relationship breakdown with his step-father. Participant spoke of his relationship with his mother as being something he wanted to be positive. Whilst at Perry House he began to regularly speak with his mother on the phone. Participant has two half siblings however has minimal contact. Participant expressed during assessment that he would like

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<sup>4</sup> A mild intellectual disability is an IQ between 50 and 70.

to build a regular relationship with his family. Perry House staff worked alongside the participant to support his reconnection with family.

### **Independent living**

Participant advised when coming to Perry House that he did not need support or prompting with self-care, expressed being able to cook basic meals however indicated that he would like to improve his cooking skills and enjoys learning to cook. Participant had basic cleaning skills but would need encouragement to complete tasks at times.

Participant receives a Disability Support Pension from Centrelink and indicated he needs support regarding budgeting and managing his money. After initially handling his own money participant is now supported by State Trustees to budget and manage his payments.

### **Interventions / Supports Offered**

- Individual Support Plan (ISP): Perry House staff worked with participant to develop and successfully implement an ISP that was individually tailored using a strengths based approach.
- Participant engaged and maintained consistent and quality engagement with his Perry House Case Management support regarding personal and practical issues surrounding budgeting (Registered with State Trustees). He was supported to take personal responsibility for and attend appointments.
- Successfully completed Youth Justice Order.
- Referred to Drug and Alcohol Counselling and no further concerns or episodes of substance abuse were identified whilst at Perry House
- Was supported to engage with a psychologist for assistance dealing with his mental health concerns.
- Has regularly attended Jesuit Community College.
- Supported to obtain complex dental care and address a number of medical concerns including eye care.
- Perry House coordinated and hosted Care Plan meetings to ensure consistency and quality of care.

### **Outcomes**

- Participant's episode of self-harm persistently decreased in frequency whilst at Perry House.
- Participant successfully engaged in education programs
- Successful exit placement from Perry House was secured in form of long-term supported Shared Accommodation (single bedroom self-contained unit in supervised complex). This is what was identified in the ISP as being the most suitable option.
- Participant continued to engage in Outreach Support after exiting Perry House. Transition included regular Care Team meetings attend by the participant and support to attend Jesuit Community College and engagement with Connexions.
- Participant rebuilt relationship with mother.
- Participant exited due to no longer requiring support

### **Participant feedback at Program Exit**

**What do you think the positive aspects of Perry House are?** “It’s good, it helped me. When I was homeless I was trying to find a place like this. This is my first home. It’s (Perry House) has given me confidence. I was scared to walk out of the front yard before”.

**Can you think of any areas where we could improve / change / adapt our program to improve your experience / opportunities?** “I can’t think of any. It is good the way it is. I like how you give help and support”

**How have you found Living at Perry House?** “It is a good place, I feel comfortable”

**How have you found the staff?** “Good, but I don’t like casuals coming in and out”

**What Changes has your involvement in the Perry House program helped you make?** “Better choices for myself, gone on the right track. Not re-offending”

**How was your experience of the support given?** “Good, keep doing what you’re doing”

**What’s your opinion of the length of time you can stay at Perry House (12 months):** “It is long enough”

**Any other comments you would like to make about the program?:** “There should be a second chance for coming back for people who leave and need somewhere, to come back and be able to improve on last time”

## **PERRY HOUSE – CASE STUDY 2: Harry\***

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### **Introduction**

*The purpose of this Case Study is to demonstrate collaborative practice on both a client and agency level. The Case Study is a detailed profile of a “typical” Perry House participant and the support that Perry House provides within a real home environment. The Case Study highlights the benefits of intensive, therapeutic support in the community to a young man that when referred had significant offending history. The Case Study is an example of how community based programs such as Perry House act as an interface between the young person, the Justice System, Disability Services and a multitude of support systems and networks.*

### **Presentation**

At the time of referral to Perry House, Harry was aged 22 and in custody. Harry presents with a Mild Intellectual Disability, Pervasive Developmental Disorder, and Post Traumatic Stress Disorder. Prior to being in custody Harry reported that he was in a cycle of severe drug dependency and abuse that created the circumstances of habitual offending to support his habit. Harry is on the Disability Support Pension and reports as having below average numeracy and literacy skills.

## **Justice Involvement**

Harry has an extensive history of offending. He was charged related to theft, theft of motor vehicle, unlicensed driving and burglary. Harry is currently on a 24 month Community Corrections Order with requirements to comply with a Justice Plan. This involves engaging with a Drug and Alcohol program and Mental Health services on a weekly basis.

## **Mental Health**

Harry has a history of self-harm but reports that this is not currently a concern. Recently commenced engagement with Centre Against Sexual Assault (CASA) for trauma specific counselling. Harry is also commencing engagement with psychologist regarding post-traumatic stress disorder. Reports as being nervous and anxious at all times and this escalates during times of stress.

## **Family**

Harry has a history of Child Protection involvement and resided in out of home care until the age of 18. Harry's mother left when he was young, and now resides in Tasmania with sporadic and often problematic contact. Due to a history of abuse and safety concerns Harry does not wish to have contact with his father. Harry has eight siblings and only has limited contact with one sister. Harry struggled to name them all and did not know ages of many. Harry was close to his paternal grandfather who died when he was 17 and this was described as a traumatic experience. Harry has limited contact with his grandmother. Harry has indicated that he would appreciate assistance to re-connect with his mother and siblings.

## **Housing**

From the age of 18 Harry moved into a caravan at his father's, this led to circumstances that contributed to offending behaviour. Harry reports that his father has a long history of criminal offending and drug dealing who encouraged him to use substances and commit offences.

Since leaving formal care Harry has lived in unsafe and unstable housing, and has been transient between crisis accommodation arrangements. Perry House has been the only program that has been able to offer safe, supported accommodation that specifically targets young people with an intellectual disability and justice involvement. Perry House has provided Harry with a safe place to live and receive support. Harry is now engaging well with a number of professional supports, is no longer using substances, and feels that stable housing is his most urgent requirement to continue the good progress he has made over the past 3 months. Perry House will continue to support Harry in securing a long term placement and have lodged Segmented Housing Applications.

## **Protective factors**

- Is interested in sports and willing to engage in activities as opportunities arise
- Has broken contact with negative and peers and is wanting to find new friends who will be a positive influence
- Has a number of supports in place and actively participates in his Care Plan. He is attending all appointments regularly.

- Respectful towards workers, developed boundaries regarding substance use.

### **Risk factors**

- Extensive history of polysubstance use.
- Is easily led if with negative peers, ID and developmental disorder.
- Poor time management and planning skills.

### **Independent Living Skills**

- Has not lived independently
- Reports as having a high standard regarding hygiene and cleanliness at the premises he lives and would expect the same from other residents.
- Has limited cooking skills, reporting he generally only prepares two minute noodles, toast, cereal etc.

### **Interventions / Supports Provided by Perry House**

- Supported to engage with Corrections, Australian Community Support Organisation, and Jesuit Community College.
- Regular reflective practice to support staff to implement strategies that address trauma responses and complex mental health concerns.
- Empowered to manage personal time timetables and set goals, engage in group participation and be active in daily structure. Provided advice regarding self-regulation support structures and how to raise concerns in appropriate manner.
- Encouraged to express self and feelings more clearly, use complaints procedure, to disengage before becoming heightened.
- Supported to access health services.
- Used a narrative approach to assist to make a degree of reconciliation with family and take responsibility for own choices and actions.
- Engaged with sports and structured recreation activities.
- Provided information about healthy eating and nutrition through the independent living program, actively drafts and implements shopping list and prepares nutritious meals.
- Gardening program.

### **Outcomes**

- Improved participation, completed programs.
- Demonstrable independent living skills
- Identified exit to independent living (in process of sourcing private rental)
- Personal routine, improved sleeping patterns, managing finances, positively engaging with workers
- Participates in Care Plan meetings, house meetings and group activities.
- Demonstrating increased self-awareness and understanding of others that was not evident at commencement of program.

## Endnotes

- <sup>1</sup> Jackson M et al. 2011, *Acquired brain Injury in the Victorian Prison System*, Corrections Victoria Research Paper Series, Paper No. 4, Melbourne.
- <sup>2</sup> Australian Institute of Health and Welfare 2015a, *The health of Australia's prisoners 2015*, Cat. No. PHE 207, AIHW, Canberra.
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