



Inclusion Australia

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**Response to the Royal Commission into
Violence, Abuse, Neglect and Exploitation
of People with Disability's *The Criminal
Justice System* Issues Paper**



Inclusion Australia: Response to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability's The Criminal Justice System Issues Paper

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Inclusion Australia acknowledges the traditional owners of the land on which this publication was produced. We acknowledge the deep spiritual connection to this land of Aboriginal and Torres Strait Islander peoples. We extend our respects to community members and Elders, past and present.

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'Self-determination is about treating a person the way they want to be treated rather than treating them how you would want to be treated' — Advocate

Background

Inclusion Australia (IA) is the national peak body for intellectual disability.

Founded in 1954 and formerly known as the National Council on Intellectual Disability, IA's mission is to work to ensure people with intellectual disability have the same opportunities as people without disability.

IA is a federated body with state agencies in New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia. Those agencies are: the Council for Intellectual Disability (NSW), Parent to Parent (Qld), the South Australian Council on Intellectual Disability (SA), the Speak Out Association of Tasmania (Tas), the Victorian Advocacy League for Individuals with Disability (Vic), and Developmental Disability Western Australia (WA).

In January 2020, the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Royal Commission) released an Issues Paper calling for public comment on the criminal justice system's interactions with people with disability.

This submission is based on the experience of IA members around Australia, including the Council for Intellectual Disability (CID) and the Victorian Advocacy League for Individuals with Disability (VALID). CID and VALID both have decades of advocacy experience in the criminal justice system.

It is important to note that this paper is informed by the experiences of disability advocates. IA acknowledges that, in some cases, advocates are telling the stories of people with intellectual disability who have experienced the criminal justice system. Unfortunately, speaking out on the criminal justice system is complex and frightening for many people with intellectual disability. That is why qualitative research focusing on the criminal justice experiences of people with intellectual disability is urgently needed. IA wants more people with intellectual disability to have the opportunity tell their own stories in their own words.

We have a particular view of rights: that they're as good as or as weak as the power that you have to realise them' — Advocate

Introduction

In Australia, people with intellectual disability have the same human rights as people without disability. However, systemic barriers often make those rights inaccessible to people with disability — and a right that cannot be accessed is a right that has been denied.

With that in mind, this response to the Royal Commission's *The Criminal Justice System* Issues Paper will:

- identify the legal, structural and cultural barriers to justice that make human rights inaccessible to many people with disability;
- illustrate those barriers to justice with case studies; and
- make recommendations for reform.

Currently, Australia already has domestic and international structures in place to bridge the gap that exists between the theoretical and practical rights of people with disability.

Domestically, laws such as the Federal *Disability Discrimination Act 1992* (the DDA) are designed to protect everyone in Australia against discrimination based on disability, as well as the human rights charters of the Australian Capital Territory, Victoria and Queensland. However, human rights often are a secondary consideration, with issues of community risk and protection predominant.

Internationally, the Commonwealth of Australia is a signatory to numerous international agreements that safeguard human rights, including the United Nations *Convention on the Rights of Persons with Disabilities* (UNCRPD). However, there is no comprehensive legal framework for the protection of human rights in Australia – and the UNCRPD has not been fully incorporated into Australian law.¹

According to Article 13 of the UNCRPD:

State Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

In order to help to ensure effective access to justice for persons with disabilities, State Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.²

Every jurisdiction in Australia also signed up to the *National Disability Strategy 2010-2020* (the NDS), the national policy framework designed to guide Australian governments' efforts to meet their

¹ *Disability Rights Now 2019*, Australian Civil Society Shadow Report to the United Nations Committee on the Rights of Persons with Disabilities: UN CRPD Review 2019, Australian Disabled People's Organisations, Disability Representative Organisations and Disability Advocacy Organisations. p12.

² 'Convention on the Rights of Persons with Disabilities,' United Nations. <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>.

obligations under the UNCRPD. Unfortunately, in Inclusion Australia's opinion, Australian governments have failed to live up to the promise of the UNCRPD and *NDS*. As a consequence, our nation's prisons have become *de facto* disability institutions – and our courts their gateways.

Urgent systemic reform is required to ensure that people with disability are able to take up their human rights. This starts with first contact with the criminal justice system. More needs to be done to stop criminalising behaviours associated with intellectual disability, and ensuring they are able to access the support necessary to keep them out of the criminal justice system.

Additionally, there needs to be more and more appropriate support within the criminal justice system. Without reforms such as investing in the support services necessary to enable people with intellectual disability to navigate the criminal justice system the human rights of people with disabilities will remain inaccessible.

'The failings of the disability service system often show themselves up, show up and play out in the justice system. Lots of people get to the justice system that are only there because the disability support system has failed them' — Advocate

Barriers to justice

The UN Convention has not — 13 years after ratification — been adequately incorporated into domestic law.

The DDA and state and territory-based human rights charters have not been amended to include all aspects of the UN Convention. Instead, Australia's Interpretative Declarations on Article 12 (equal recognition before the law), Article 17 (protecting the integrity of the person) and Article 18 (liberty of movement and nationality) have restricted the scope of the UN Convention.

'DDA, the Act, is overdue for review,' one advocate said.

The National Disability Strategy (NDS) has not been implemented as a whole of government approach.

When released, the NDS was supposed to have biennial progress reports. Only two reports were released during the 10 years of the NDS, and neither of those reports evaluated outcomes for people with disability. Instead of the NDS being elevated to a national level with the Department of Prime Minister and Cabinet leading its implementation across multiple portfolios and jurisdictions, it has remained with the Department of Social Services.

As a consequence, within the disability advocacy sector the NDS is widely seen as a wasted decade because of its demonstrable failure to deliver measurable outcomes that address systemic human rights violations.

The flawed implementation of the National Disability Insurance Scheme (the NDIS).

Of the 4.4 million Australians who have a disability³, only about 10% (449,998)⁴ are accessing the NDIS. Yet, in Inclusion Australia's view, since 2017 state and territory governments have used the rollout of the NDIS as a reason to wind back supports and services designed to make the community — including the criminal justice system — more accessible for all people with disability. For example, the Tasmanian state government rolled all disability funding into the NDIS bilateral agreement. While it extended block funding to community disability organisations until 2020, the government no longer provides funding to community disability organisations that have previously provided support, services and connections for people with disability and their supporters. Subsequent changes to the Information, Linkages and Capacity Building grant process, taking it from a state-based to a nationally competitive program, has created service gaps which impact people with disability, and particularly intellectual and cognitive disability.

³ <https://www.abs.gov.au/statistics/health/disability/disability-ageing-and-carers-australia-summary-findings/2018>

⁴ <https://data.ndis.gov.au/>

An example of this is the Magistrates Court Diversion List which was originally designed to manage defendants with mental health issues. It was expanded following a review in 2013 to consider people with cognitive disability and brain injury, with the referral process expanded to include support as well as treatment.

However, in addition to the Diversion List systems and processes not being sufficiently developed, for example, with mechanisms to identify people with cognitive impairment, the referral process is reliant on the services and supports being available from community disability organisations, who are no longer funded to provide these services.

Improper reliance on emergency services

People with intellectual disability, families and advocates have told IA that, as a consequence of service changes following the introduction of the NDIS, emergency services personnel (paramedics, police and hospital emergency staff) are increasingly becoming the service providers of last resort for people with intellectual disability. As emergency services personnel lack the training and skills to respond to the complex needs of people with intellectual disability, there is an increased risk that disability-related behaviour will be medicalised and criminalised.

For example, many advocacy clients who have experienced reduced access to services because of poor NDIS planning have found themselves subject to physical and chemical restraint because their service providers have been underfunded to address behavioural issues that have occurred in their homes. In some instances, this has led to police involvement and charges being laid by police in an attempt to keep the other residents or surrounding neighbours safe from behavioural escalations.

Similarly, advocates describe the increasing instances of contact between police and people with intellectual disability where lack of access to services and supports has led to issues such as problematic sexual behaviour, violence, aggression and assaults. In all instances the person with intellectual disability has been largely unable to manage their own behaviour due to distress. This behaviour, within the disability services system, is framed as 'behaviours of concern', yet when people with intellectual disability are exposed to other services at the point of crisis, the behaviour is often framed as wilfully criminal, and pathological and requiring physical and chemical restraint to manage.

The haphazard use of restrictive practices

IA has received numerous concerning reports from people with intellectual disability, families and advocates regarding the haphazard use of restrictive practices. According to those reports, staff working in the disability sector often did not understand the definition of restrictive practices, definitions of restrictive practices varied between jurisdictions, and reporting mechanisms were bureaucratic and time consuming. The reports on the use, reporting and investigation of restrictive practices within the disability sector suggest there is an urgent need to document and monitor restrictive practices within the criminal justice system.

'The pipeline into that adversarial system starts right at your first contact with police,' an advocate said, 'and then it's all about having to prove your competence over and over again and having to prove your ability to manage your own behaviour.'

Independent Advocate

'The way that [disability advocates] understand disability ... is really different to the way that the criminal justice system would understand disability. For people who work in the disability sector and who are interested in disability politics and the social model of disability and rights, the conception of *what is cognitive disability?* is very different to the way that it's seen in the criminal justice system ... There's that really inherent tension ... because the system very much operates in a risk-treatment paradigm. Part of that paradigm means that there's ... paternalism and overarching ... encroachment on people's lives, because once you are deemed a person with a disability who is less competent and less able to manage, then all sorts of areas of your life are opened up to control and these huge systems of control.'

Independent Advocate

The criminal justice system does not have mechanisms in place to identify whether people with an intellectual disability require reasonable accommodation in matters — such as additional support for communication.

The failure to identify people who require additional support is not just an issue for people with intellectual disability. It can also be a barrier for a range of other people, including people from culturally and linguistically diverse backgrounds, people with low levels of education and people with mental health concerns. Without adequate support, therefore, a range of people can find it difficult to understand their rights (such as the right to silence), understand questions, understand consequences, and have their version of events heard, understood or believed (as a defendant or witness).

In criminal matters, the adversarial nature of the legal process can be intimidating and confusing for people with intellectual disability. Often, people with intellectual disabilities do not understand what is happening; why it is happening; or what is at stake.

'Across the entire criminal justice system there's very little understanding of what reasonable adjustments would look like for a person with a cognitive disability,' one advocate said.

Without recognising and understanding intellectual disability, misinterpretations and assumptions can be made about behaviours – people are aggressive and uncooperative, rather than frightened and confused.

'There's no safeguarding in the criminal justice system specific to people with intellectual disability,' an advocate said. 'It's a closed system. Once people go inside, no one is looking at what's happening. And that is really, really problematic.'

Independent Advocate

The justice system does not adequately take into account the additional barriers faced by Aboriginal and Torres Strait Islander people with intellectual disability.

The additional barriers faced by Aboriginal and Torres Strait Islander people with intellectual disability include higher levels of social and economic disadvantage, an increased risk of not being identified as a person with an intellectual disability, a history of negative relationships between Indigenous Australians and police, and a lack of culturally appropriate supports.

The justice system does not adequately train personnel.

As a consequence, justice personnel often do not know how to communicate clearly with people with intellectual disability. Advocates find that staff often lack the most basic understanding of intellectual disability and, as a consequence, are more likely to respond in an adversarial way to behaviour that is related to disability or trauma.

The justice system does not adequately resource support services for people with disability.

As defendants, people with intellectual disability are often dependent on government funding to pay for legal representation. Due to the limits of state funding, lawyers often lack the additional time required to communicate properly with their clients and represent their interests. Advocates suggest that lack of time with a client can lead to the lawyer not fully understanding their client's cognitive difficulties and associated behaviour. Lack of knowledge of intellectual disability can also lead to lawyers failing to understand the importance of supports and adjustments around the person to ensure they can manage a legal order. In many situations advocates find that people with intellectual disability are subject to orders they do not understand and are unable to comply with.

Advocates state that, as a consequence of the lack of appropriate disability support and other human services, people with intellectual disability had more limited access to bail, diversionary orders and non-custodial sentencing options than people without disability⁵.

A 2005 study in Western Australia, found that over the period of the study more than one third of all individuals with an intellectual disability who were charged with a criminal offence were given a custodial sentence, compared with only 13 percent of the non-disabled arrestees. In addition, 16 percent of individuals with intellectual disability arrested for the first time were sentenced to custody compared to 7 percent of general population offenders.

This failure to design the processes of the criminal justice system so that they are accessible to people with disability is inherently discriminatory. Advocates have found that the justice system is only accessible to people with disability when they have an independent guide or interpreter on hand to help them navigate the system.

'One of the things that people [with intellectual disability] have often said to me is that what would really work for them would be to have a person who's like a cross between a support worker mentor or a case manager or something,' an advocate said.

'They want someone that they're really able to trust and who is going to help them kind of face the world and go with them – be the continuity between different systems and be the person who helps them navigate different systems.'

The justice system does not protect people with disability.

Within custodial environments, people with disability are more vulnerable to abuse and therefore are more likely to be placed under management (solitary confinement and long periods of time locked in a cell alone).

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https://www.researchgate.net/publication/49278276_People_With_an_Intellectual_Disability_in_the_Prisons

'Some of the very worst stuff I've seen in the justice system is people with intellectual disability being held in management units,' an advocate said,

'I knew a 19-year-old man with intellectual disability and schizophrenia. His behaviour couldn't be managed in the unit he was in, so he was transferred to a management unit. There he was locked in his cell, 23-hours-a-day, and when I saw him in custody he was in handcuffs and leg shackles. He didn't really understand why he was there.

'Often people with intellectual disability, when they go to prison, if they are pretty street smart, they might go to a mainstream prison unit. Or they might go somewhere where there's some level of protection, but it's not a specialist unit. But then there are specialist units for people with intellectual disability, but often their behaviour can't be managed in that unit, and so the only other option is management.'

The advocate said that the 19-year-old man with intellectual disability and schizophrenia was 'broken' by the treatment he received in a management unit:

'He was a different person. ... it is essentially torture. It's cruel, it's inhumane and it causes trauma.'

Violence and abuse is common and widespread within the criminal justice system.

The Disability Royal Commission has provisionally defined 'violence and abuse' to include assault, sexual assault, constraints, restrictive practices (physical and chemical), forced treatments, forced interventions, humiliation and harassment, financial and economic abuse and significant violations of privacy and dignity on a systemic or individual basis. By that definition, advocates said, violence and abuse are inherent within the criminal justice system because assault, forced treatments and humiliation are common. Systemic forms of violence and abuse within the prison system include chemical restraints, seclusion, isolation, forced strip searches and urine tests, forced psychological treatment, and separation from support.

The justice system does not adequately prepare people with disability who are incarcerated for a transition back into the community.

People with intellectual disability are at a greater risk of being institutionalised by the highly structured environment of custody. When they are taken into custody people with intellectual disability often lose their supports, including housing. When they are released from custody, therefore, they are often homeless and without adequate supports, meaning that they are more likely to have to live in an unfamiliar area. The combination of inadequate supports and unfamiliar surrounds makes the transition back into the community more difficult – increasing the risk of reoffending.

'For a person with a disability who's not able to manage the transition in and out of prison, the impact of prison for people with disability is so much greater and the punishment is so much more,' an advocate said.

'[The punishment] is so beyond what it is for any other member of the community because you're not just punishing them by withdrawing them from society and making them feel bad. You're also causing massive impact on their mental health, their ability to emotionally regulate themselves, their connections with their own community, their ability to even ... understand. We take a person who we acknowledge is not able to understand the wrongness of their own conduct in some instances, we accept that she's not able to understand the legal process, we accept that in some senses she's not guilty because she's not able to be held accountable. And yet we put her in prison and make sure that she stays in prison for a length of time where she becomes completely disconnected from her community and she's traumatised by what she sees around her. She's traumatised by the fact that she doesn't have disability-specific support that is able to work on living skills and capacity building. ... and then we expect her to go out into the community again after this incredibly damaging experience and function ... and not go and offend again.'

The justice system and the NDIS are not connected.

The NDIS does not systemically engage with alleged offenders with intellectual disability. NDIS Local Area Coordinators (LAC) and planners do not have the time or expertise to help participants with justice system issues or complex needs. Inclusion Australia welcomes the October 19, 2019, decision by the Council of Australian Government's Disability Reform Council to introduce Justice Liaison Officers (JLO) by the NDIS. The role of the JLOs is to provide a single point of contact for workers within state and territory justice systems to coordinate support for NDIS participants in youth and adult justice systems. Monitoring and evaluation of the impact and benefits of the JLOs needs to be undertaken to ensure the JLO initiative improves connections between the NDIS and the criminal justice system, and provides benefit for people with intellectual disability. This needs to be qualitative and quantitative, and include the perspective of people with intellectual disability and their supporters.

The NDIS has not replaced the provider-of-last-resort role previously fulfilled by state and territory governments.

In 2017, the Productivity Commission recommended that the NDIA release a provider-of-last-resort policy. The NDIA has not done so. Instead, the NDIA has taken a narrow, limited approach to the provision of disability services and supports in the criminal justice system. There has been a reported tendency for the NDIA to attempt to hive off trauma-related needs as the responsibility of the mental health system.

'Police have been increasingly used to sorting out problems in group homes,' an advocate said. 'Staff, these days, will just, rather than try and mediate or try and resolve issues between clients or residents and staff or residents and residents, they'll phone the cops. And the cops get very sick of that, so they sometimes come in more frustrated than they should be. ... Systemically, at that frontline, it is the failure of the system, and it's an abuse of the police, putting them into roles that they should not be in.'

The disability sector and criminal justice system take fundamentally different approaches to cognitive disability.

Advocates said that the ethos, attitudes and practices of the disability services system and the criminal justice system were incongruent.

Advocates said that, within the disability service sector, there was a broad acceptance that disability should be viewed as a personal attribute deserving of protection and increased support. As a consequence, the disability service sector broadly accepts the principles of the UNCRPD, as well as the right to self-determination and the application of the least-restrictive treatments and practices.

By contrast, advocates said, that acceptance and understanding of intellectual disability was often lacking in the criminal justice system. Advocates found that criminal justice system personnel had a poor understanding of disability rights; as a consequence, people with intellectual disability who offended were treated as offenders first and people with disability second. Advocates said that, because the criminal justice system measured success largely via the management of forensic risk and lowered rates of recidivism, the pathologising of disability and subsequent control of people with disability was an easy step – making disability advocacy within the criminal justice system difficult because human rights-informed views of disability were misunderstood and often met with suspicion and disagreement.

According to advocates, the criminal justice system generally treats people with intellectual disability as inherently risky or dangerous; and that risky or dangerous categorization can then be used to justify forced treatment, unreasonable restrictions, chemical restraint, coercion and control. That is why, in the view of advocates, the human rights of people with intellectual disability are greatly diminished when people with intellectual disability are viewed as offenders first and categorized as risky or dangerous.

The criminal justice system routinely criminalises behaviours directly related to a person's disability.

An advocate said: 'There should be greater funding for forensic disability services in the community that actually have human rights as the focus and quality of life and aren't about the risk-treatment paradigm, because ... what you find frequently for people with intellectual disability who offend is that their quality of life in the community is terrible anyway. And, so, there are times where the offending is a protest against that [poor quality of life]. It might be a protest against restriction, discrimination. So, develop services that actually meet the needs of this group of people because it should be their right to have their disability-related needs addressed by a system that doesn't criminalise them.'

The criminal justice system does not cater to the needs of women with disability.

Advocates said the criminal system offered less support for women with disability than men with disability. For example, in Victoria the Department of Health and Human Services does not accept women into its Disability Forensic Assessment and Treatment Service, meaning that women who require treatment and who cannot be released into the community must remain in prison.

'For a person who displays offending behaviour in the community, the first response should be from a disability system. It shouldn't be from the criminal justice system. It shouldn't be pathway into incarceration and a lifetime of torture,' an advocate said.

'People with cognitive disability in general – so, brain injury and intellectual disability – should have the right to have their offending-related needs addressed by disability systems, not by the justice system' – Advocate

Case study 1: Diversion

The New South Wales-based Cognitive Impairment Diversion Program was funded as a pilot in 2017. The pilot, based in the Penrith and Gosford local courts, screened, and assessed defendants to determine whether they had a cognitive impairment, obtained evidence of each defendant's disability, helped provide access to the NDIS and the initial implementation of an appropriate NDIS plan, and provided a diversion plan to support dismissal of charges under section 32 of the Mental Health (Forensic Provisions) Act 1990.

The pilot was established by the Justice Health and Forensic Mental Health Network and the Intellectual Disability Rights Service (IDRS), then solely run by IDRS.

A 2019 evaluation of the Cognitive Impairment Diversion Program by consultants Westwood Spice found that 87 per cent of participants were diverted from the criminal justice system, with the proportion of participants on NDIS plans increasing from 15 per cent to 58 per cent after 12 months.

Following the evaluation, the Department of Communities and Justice said the pilot was not scalable.

CID said the expenditure on the pilot — approximately \$960,000 in 2019 — was justified because it benefited participants, delivered savings to the justice system and secured untapped disability funding for NSW.

It is concerning the Cognitive Impairment Diversion Program is not scalable. Even accepting this is the case, this does not mean that identifying people with cognitive disability is not required, or reduce the human rights, social and economic benefits associated with this. It may just reflect the approach taken; more needs to be done to establish a diversion program that meets the needs of people with cognitive disability and is able to be implemented at all prisons and correctional centres.

The Productivity Commission Report on Government Services (ROGS) 2021 indicates the real expenditure on justice services in Australia between 2015-16 and 2019-20 has increased from \$11,140m to \$12,720m.

Recidivism rates since 2014-15 for adults released from prison, and returning to prison, or receiving a community corrections order, within two years of release have averaged more than 40 percent. Recidivism rates for correctional services correction sanctions have averaged more than 50 percent for the same period.

In NSW, according to the ROGS 2021, recidivism rates are consistently higher than the Australian average.

In 2014, the Australian Human Rights Commission found, in NSW, young people with mental health disorders and/or cognitive impairment are at least six times more likely to be in prison compared with young people without a disability.⁶

It isn't enough to say a project diverting people from the justice system isn't scalable, it is incumbent the NSW government to design a system to divert people with cognitive disability and provide them the supports necessary to exercise their human rights.

Case study 2: Criminalising disability

One of the by-products of deinstitutionalisation is that many former residents of the institutions have become caught up in the criminal justice system.

In some cases, people with intellectual disability end up before the courts because they display behaviour that was tolerated within institutions — and they were released without being shown ways to manage their behaviour in socially acceptable ways. Typically, this cohort of people with disability are men now aged in their 50s and 60s.

One VALID client is a typical example.

This man, who has a moderate intellectual disability and schizophrenia and is aged in his 50s, grew up in an institution. When he was released to a group home, he had problematic behaviours, including masturbation. Advocates said he had significant anxiety and had learned, while institutionalised, to use masturbation to self-regulate his anxiety. Due to the fact that he had grown up in an institutional setting, he found that being in the community often made him anxious and would often run away or cry, but always would self-manage his anxiety by masturbating.

Eventually he was caught, charged, and convicted for masturbating in public.

An advocate said:

'The pathways for that kind of thing in the court system are so limited that basically — even though that behaviour was accepted for him in an institution, was behaviour that he was using in a very functional way, was behaviour that he didn't fully understand was socially unacceptable — the result for him is being criminalised and placed on an order. Even though the justice system is very gentle on people like that, it's still the fact that that behaviour is criminalised. The message that he then receives is "your behaviour is not safe and if you go out in public, there's a chance the police might come and pick you up and take you to be questioned," which is an absolutely terrifying experience.'

⁶ Face the Facts: Disability Rights 2014, AHRC, page 2. Source: [Justice reinvestment for people with disability could save millions | Australian Human Rights Commission](#)

'If there are disability services that are able to wrap around a person and create the kind of life that gives the person agency and self-determination, then there is likely to be less need for the criminal justice response to it. In terms of treatment services, there needs to be a much, much, much bigger response from the state to manage people where their needs are related to disability. Even in terms of accommodation, treatment services like drug and alcohol treatment, there is no specialist treatment for people with intellectual disability.' — Advocate

Recommendations

All Governments should:

- Incorporate UN Convention rights into all services, policies and programs that apply to people with disability.
- Bring all anti-discrimination laws into line with all articles of the UNCRPD.
- Develop strong human rights legislation that can be used independently of other legislation and establishes statutory complaints bodies.
- Establish statutory safeguarding and complaints mechanisms that are adequately funded to provide inspections and face-to-face visits to all people with intellectual disability in places of detention, incarceration and forced treatment.
- Review all protocols and procedures in the criminal justice system to ensure they are universally accessible. Identify and remove all barriers to a fair trial, liberty, legal capacity, and recognition before the law for persons with cognitive disabilities.
- Ask the Standing Committee of Attorneys General to dismantle the laws governing the indefinite detention without trial of people with disability.
- Annually report on the number of people with disability held on indefinite detention.
- Raise the status of the 2020-30 iteration of the National Disability Strategy — turning it into a federal document that cuts across all portfolios and jurisdictions — and ensure that the NDS has measurable outcomes that are publicly reported every 12 months.
- Ensure that accessible communication such as Easy Read, plain English and video is a required form of communication throughout the criminal justice system.
- Develop and implement a provider-of-last-resort policy that holds state governments responsible for ensuring the continuation of services for most complex people involved in the criminal justice system when all other forms of service have failed.

The Australian Government should:

- Review the Disability Discrimination Act 1992.
- Bring all anti-discrimination laws into line with all articles of the UNCRPD Convention.
- Create a coordinated NDIS point of access for people with intellectual disability who become involved in the criminal justice system who do not yet have access to the NDIS. Ensure that the gathering of evidence of disability, planning and initial coordination of support is done immediately at the point of access to ensure people going through courts are able to have supports available quickly to avoid greater punishment.

State and Territory governments should:

- Adequately fund disability advocacy across Australia with provision for justice specific advocacy services and programs to be developed.
- Ensure all government services and programs are accessible to people with disability by adequately funding services to ensure that staff have the time, training and skill level to be able to provide accessible service.
- Provide additional support services — including support workers with the skills to guide people with disability through every facet of the justice system.
- Develop community-based, human rights focused, trauma informed forensic disability services with the aim to divert people with disability from the criminal justice system, reduce institutionalisation, and connect people with their communities, families and supporters.
- Develop community-based forensic disability services that are culturally appropriate to Aboriginal and Torres Strait Islander people with intellectual disability.
- Ensure all assessment, treatment, preventative and diversionary services are available and accessible to people with intellectual disability. This includes fully accessible addiction, mental health, family violence, housing and homelessness services.
- Establish or expand existing independent visitor programs to ensure that every prisoner with a disability is independently visited and interviewed every 12 months. Independent visitors should be paid positions that are incorporated into the criminal justice system as statutory safeguards.
- Establish an independent statutory body with the powers and resources to receive and investigate complaints relating to the criminal justice system and people with intellectual disability.
- Fund projects and programs that will teach and develop the self-advocacy skills of people with intellectual disability involved in the criminal justice system.