

VALID

Justice For All

September 2021



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Acknowledgements

VALID acknowledges all First Nations people, especially the Wurundjeri people of the Kulin Nation, on whose land the Justice for All project was done. VALID pays its respects to Elders past, present and emerging, and acknowledges that sovereignty was never ceded.

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DEFINITIONS

People with intellectual disabilities with involvement in the criminal justice system determined the definitions used throughout the project and in this report.

Disability

Disability was a concept understood by group members to refer to anyone who experiences permanent impairments. They particularly focussed on people with a combination of cognitive or psychological impairments, who have also experienced childhood abuse and neglect.

Criminal Justice System

This includes police, courts, community corrections and prisons. It does not include secure treatment facilities for people with cognitive disability, psychiatric or psychosocial disability.

Worker

Anyone who works in the criminal justice system or disability system who has a professional role with people with intellectual disabilities. This includes lawyers, judges, magistrates, prison staff, community correctional staff, disability support workers, and other government staff.

Introduction

People with intellectual and other cognitive disability are over-represented in criminal justice systems around the world – a fact that has been largely uncontested in the Australian literature for over 20 yearsⁱ. The situation is even worse for Aboriginal and Torres Strait Islander people with disability. A 2013 Victorian parliamentary inquiry reported that people with intellectual disability were “anywhere between 40 and 300 percent more likely to be jailed than people without intellectual disability”ⁱⁱ. Yet this is a problem that successive governments have so far been unwilling or unable to solve.

The Justice for All project was established by VALID in response to the increasing need for support and advocacy that VALID witnessed for people with intellectual disability involved in the criminal justice system. When the National Disability Insurance Scheme (NDIS) commenced rollout in metropolitan Melbourne, demand for VALID's individual advocacy service increased. At the same time, the state government began rolling back direct service provision, including case management. The increase in requests for VALID's advocacy was often from people who had previously not come to the attention of disability advocacy services. These people were slipping through the system's cracks. They did not have adequate disability support, or in some instances, any support at all.

The project had three key components:

- A review of the academic literature – a Rapid Evidence Assessment
- The establishment of a Peer Action Group (PAG) with members who have intellectual disabilities and past or current involvement with the criminal justice system
- An online forum for professionals who work in the disability and criminal justice systems

The PAG also produced a virtual reality film that provides insight into the members' experiences of the criminal justice system titled *They Will Use My First Name*.

The people with intellectual disabilities who took part in the project talked about their own lives. They also told us about the experiences of other people with disabilities they know in the criminal justice system including people with Acquired Brain Injury (ABI) and psychosocial disabilities. Whilst this project is based on the experiences of people with intellectual disabilities, we note that people with ABI and psychosocial disabilities have similar experiences. Several of the recommendations made by the group are intended to extend to all people with disability in the criminal justice system.

The recommendations in this report have been drawn from the ideas of the PAG members, suggestions from professionals who attended the forum, and the Rapid Evidence Assessment.

The funding for this project was generously provided through a grant from the Victorian Office for Disability.

The featured quotes are the words of people who took part in the project.

About VALID

VALID is an award-winning Disabled People's Organisation that has been at the forefront of advocating for people with intellectual disability and their families in Victoria since 1988. VALID provides empowering advocacy support: we stand behind people to support their self-advocacy; we stand beside people to assist them in asserting their rights and seeking justice; and we stand before people who require representation to ensure their rights are promoted and defended.

VALID provides independent individual advocacy support to more than 250 people with intellectual disabilities annually, as well as self-advocacy workshops, peer-led training for more than 1500 families, self-advocacy networks for 300 people, 30 peer action groups in regional and rural communities, the annual Having a Say Conference with 1000 delegates, and we distribute information and advice to a network of more than 18,000 e-newsletter subscribers.

VALID also runs projects in partnership with disability and community organisations and governments nationally. VALID is the Victorian Agency Member for Inclusion Australia and a member of Inclusion International. VALID is funded via grants from the Victorian State Government and the NDIS Information, Linkages and Capacity Building program, and is not an NDIS service provider.

VISION

VALID is committed to the vision of an Australian nation in which people with a disability are empowered to exercise their rights – as human beings and as citizens – in accordance with the United Nations Universal Declaration of Human Rights and the Convention on the Rights of Persons with Disabilities.

MISSION

VALID's mission is to promote and protect the human rights of people with an intellectual disability and to champion their rights as citizens to community presence, choice, respect, community participation and self-determination.

AIMS

VALID aims to empower individuals with intellectual disability to:

- Exert control and influence over the decisions and choices which affect their lives
- Inform and influence the policies, processes and practices of disability service agencies, governments, and other authorities
- Exercise their human rights and citizenship status within their local communities.

Recommendations

Recommendation 1 | The ‘Individual Profile Communication Tool’

That the Victorian Government fund the codesign and development of an ‘individual profile communication tool’ for people with intellectual disability to use with police, courts, lawyers and other justice system professionals. This tool should be developed by and for people with intellectual disabilities so they can be in control of their own stories and communicate important information about their identities, behaviour and support needs. (See *Being in Control of Their Own Stories*, p.25).

Recommendation 2 | A 24-Hour Support Service

That the Victorian Government fund an independent 24-hour specialist support service for people with intellectual disability or other cognitive disability who find themselves in crisis and who have barriers to accessing support. This service should provide counselling, referral and crisis support to people in the community and in places of detention, with capacity to provide outreach support to settings such as hospitals and police cells.

Recommendation 3 | An End to Torture

That the Victorian Government commit to ending solitary confinement, seclusion, and other restrictive practices for people with intellectual disability in custodial settings, including legislating that solitary confinement cannot be used for people with cognitive disability, and that while in custody they are detained safely in individual cells, and have free, unlimited access to independent advocacy.

Recommendation 4 | An End to Detention for People Unfit to Plead

That the Victorian Government commit to eliminating the detention of people whose cognitive capacity does not allow them to comprehend the nature of their offending, and who have limited capacity to modify their own behaviour. People without the cognitive capacity to comprehend their offending should be managed and supervised in the community.

Recommendation 5 | Diversion and Court Programs

That the Victorian Government commit to developing diversionary programs and more specialist court programs for people with intellectual disability to prevent the criminalisation of disability-related behaviour and the over-incarceration of people with intellectual disability. All diversionary and court programs should include the mandatory training of all staff in disability rights, person-centred practices and trauma-informed care.

Recommendation 6 | Preparation for the OPCAT

That the Victorian Government prepare Victoria for the 2022 deadline for the implementation of the Optional Protocol on the Convention Against Torture (OPCAT) in Australia. This includes ensuring that the National Preventive Mechanism (NPM) bodies include people with disability expertise and are well resourced to inspect and report on all closed environments and places of detention, not just high-risk places of detention. This should be a preventive rather than complaints-driven model.

Recommendation 7 | Places of Support

That the Victorian Government invest in community-based alternatives to prison and places of detention for people with intellectual disabilities who have committed offences and who need to be detained or supervised under a legal order. Alternative places where people with intellectual disabilities can serve their sentences should provide a ‘step-down’, skill-building environment that is person-centred and trauma-informed.

Recommendation 8 | Strengthening Transitions

That the Victorian Government fund transition and coordination services for people with intellectual disability involved in the criminal justice system. Transition and coordination services should be well-resourced, specialised, and networked to other services and resources, and focus on supporting people with intellectual disability make successful transitions from custodial environments into the community.

Recommendation 9 | Real Homes

That the Victorian Government provide stable, affordable and sustainable homes to all people with intellectual disability involved in the criminal justice system. People with intellectual disability should choose the type and location of the homes they will live in, rather than these factors being driven by the availability of beds within existing services.

Recommendation 10 | Non-NDIS Supports

That the Victorian Government commit to providing high quality, genuinely inclusive and accessible services that are commonly needed by people with intellectual disability with involvement in the criminal justice system. This includes advocacy, mental health and dual disability services, drug and alcohol services, parenting programs, health and wellbeing, family violence services, and crisis services including accommodation for people who are homeless or at risk of homelessness.

Recommendation 11 | Accessing the NDIS

That the Victorian Government permanently fund services that support people with intellectual disability to access the NDIS, support them with NDIS planning, and support them to resolve problems with their NDIS plans. These services should be easily accessible for referral by police, courts, community corrections, Aboriginal and Torres Strait Islander and CALD services, family violence, mental health, drug and alcohol, community health services, and advocacy organisations.

Recommendation 12 | Filling the Gaps

That the Victorian Government commit to providing support to people with intellectual disability whose other supports have failed. This includes funding ‘services of last resort,’ providing interim funding for people who are not yet receiving NDIS support, and funding necessary supports that cannot be funded under the NDIS.

Recommendation 13 | Workforce

That the Victorian Government invest in training and ongoing workforce development for all criminal justice system employees. All staff should receive training and skill development in areas such as disability rights, the effects of trauma, effective communication strategies with people with intellectual disability and person-centred principles. Training and skill development should be ongoing and should include police, magistrates, lawyers, community correctional staff, custodial, and clinical staff.

Recommendation 14 | A Justice Advocacy Service

That the Victorian Government fund an independent justice-specific disability advocacy service for people with intellectual and other cognitive disability involved in the criminal justice system. This service should include supported decision-making services for justice-involved people with intellectual disability, and have capacity to provide free, independent advocacy to people at any point in their justice system journey. To ensure people with intellectual disability have access to advocacy, the right to disability advocacy should be enshrined in legislation.

Recommendation 15 | Behaviour Support Services

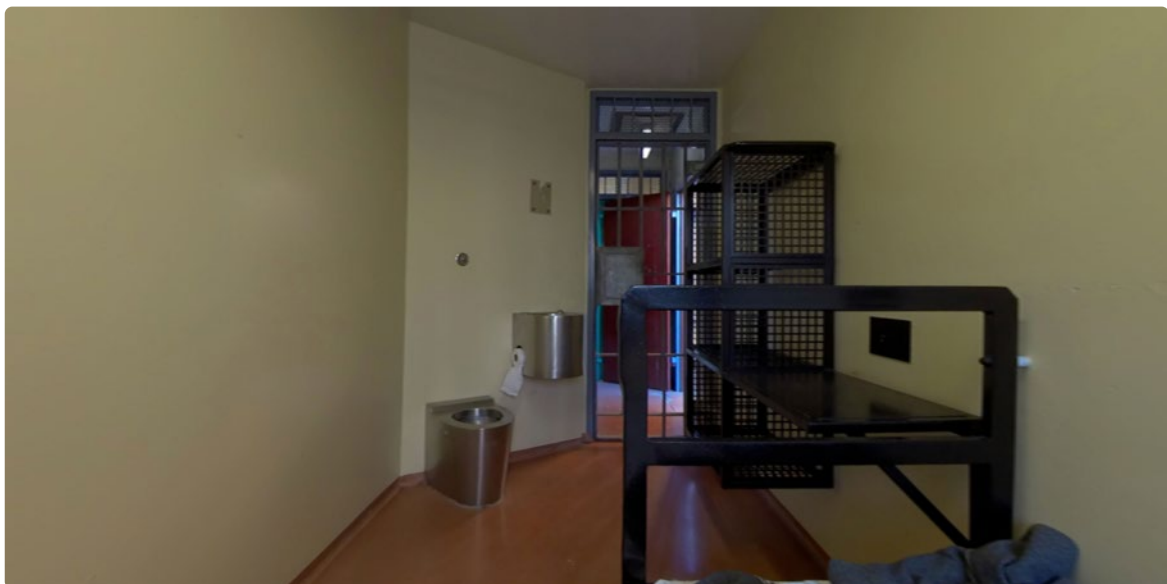
That the National Disability Insurance Agency (NDIA) commit to funding Positive Behaviour Support in the NDIS plans of all people with intellectual disability involved in the criminal justice system.

Recommendation 16 | Investment in Research

That the Australian Government invest in research into the efficacy of the NDIS for justice-involved people with disability.

Recommendation 17 | Reconceptualising Rehabilitation

That the Victorian Government reconceptualise and redevelop all forensic programs, treatments, and therapies for people with intellectual disabilities. Forensic programs should be well funded and codesigned with people with lived experience. Programs should be grounded in human rights principles and should be trauma-informed and person-centred.



1 | Project Framework and Design

The project framework and design were based on VALID's established method for investigating the prevalence of systemic advocacy issues including an examination of:

- **Principles** – relevant Articles were selected from the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)
- **Research** - A Rapid Evidence Assessment was conducted and completed by Dr Claire Spivakovsky
- **Voice** – people with intellectual disabilities gave information about their own experiences, including in a Peer Action Group which met regularly throughout the project
- **Consultation** – a forum was held with professionals across the criminal justice system
- **Call to Action** – this report, its recommendations, and the project video, *They Will Use My First Name*

PRINCIPLES

The project team selected the following Articles from the UNCRPD as a foundation for understanding the obligations of government to people with intellectual disabilities involved with the criminal justice system:

- [Article 12 – Equal recognition before the law](#)
- [Article 13 – Access to justice](#)
- [Article 15 – Freedom from torture or cruel, inhuman, or degrading treatment or punishment](#)
- [Article 16 – Freedom from exploitation, violence, and abuse](#)
- [Article 26 – Habilitation and rehabilitation](#)

The Articles were used as a framework for discussion in the Peer Action Group meetings.

RESEARCH

The Rapid Evidence Assessment determined four key problems for justice-involved people with intellectual disability and the NDIS.

The project team developed questions for the PAG members based on these four key problems:

- Access to the NDIS, including:
 - Issues related to discrimination and stigma attached to disability labels
 - Under identification of intellectual disability for justice involved people
 - Difficulties of meeting eligibility requirements when experiencing multiple forms of disadvantage and complex life circumstances
- NDIS planning, including:
 - The difficulties of effective NDIS planning around the complex lives of justice involved people
 - The need for good case management and support coordination
- Workforce issues, including:
 - The skills required to gain the trust of and meaningfully engage with justice involved people
- Behaviour support issues, including:
 - The narrow definition of behaviour support under the NDIS

“...it is estimated that between two percent and 40 percent of prisoners have an intellectual disability. Within this cohort, it is not uncommon for individuals to experience multiple and compounding forms of disadvantage... referred to as ‘complex support needs’. Worryingly, research shows that it is not uncommon for people with disability who have complex support needs to cycle in and out of the criminal justice system more frequently than their peers, often due to a lack of suitable and sustainable service provisions. Aboriginal and Torres Strait Islanders are notably overrepresented within all of these cohorts.”
Spivakovsky, 2019.

VOICE

In total 16 people with intellectual disability and experience of the criminal justice system contributed to the Justice for All project in the following ways:

- Three people were consulted in the initial stages to inform the design of the project
- Four people were members of the project Steering Group (this was a rotating role and there were two members present at each Steering Group meeting)
- Ten people were interviewed for the film *They Will Use My First Name*
- Six people regularly participated in the Peer Action Group (PAG) at the VALID office and a further four people remained in contact with the project team despite being unable to attend meetings in person.

Some members had barriers to attending in person which ranged from distance to VALID's office and experiences of trauma that made them unable to be in meetings with others. Some members of the PAG had difficulty managing their behaviour and emotions when in the group, and other members had periods in custody or moved to other locations and were no longer able to participate.

All members of the PAG were male and aged over 18. One female was interviewed for the short film. The project team had considerable difficulty recruiting women to the project.

Eight of the 16 people who participated in this project expressed interest in continuing the Peer Action Group and working on systemic advocacy issues. All people with disabilities who participated in the project were remunerated.

An exploration of the information provided by PAG members is provided in detail in the next section - *What People Told Us – Peer Action Group*.

CONSULTATION

VALID hosted a forum for professionals working in the criminal justice system in June 2021. Attendees included people working in government, NDIA, courts, legal services, non-profits, advocacy organisations and statutory agencies. An exploration of the information provided at the forum is provided in detail in this report – *Professionals Forum*.

CALL TO ACTION

The outcomes of the Justice for All project are documented in this report, including recommendations about actions for change that were suggested by people with intellectual disabilities and professionals consulted throughout the project. The virtual reality film that has been made as part of the Justice for All project is available via the link below. If you would like to view the film in the VR headset, please contact VALID to request use of the headset. If you are viewing the film on your computer, please use your mouse to move around the screen to view the environments the film depicts.

[They Will Use My First Name](#)



[They will use] My First Name

An immersive 360 documentary by Victorian advocacy organisation VALID exploring the experiences of people with intellectual disability in Australia's criminal justice systems.



2 | The Peer Action Group

INTRODUCTION

The members of the Peer Action Group (PAG) were recruited in a range of ways. Project staff developed a flyer which was sent to contacts in their networks. VALID advocates also identified and invited people who had current advocacy issues that were near the point of resolution, or who had recently finished an advocacy case.

PAG members were asked questions based on the Rapid Evidence Assessment and on selected UNCRPD articles which were presented in plain language. Members were asked about their own experiences primarily.

At the beginning of the PAG sessions, knowledge about self-advocacy and systemic advocacy was low. Members of the group expressed scepticism that they had any power to make systemic change. They said “nothing ever changes”, and that “trying to make change is pointless”. Over time however, several members expressed hope for change, and said that participating in the group made them feel strong, safe, and listened to.

“I feel safe...I like coming here.”

PAG members developed an understanding of human rights, self-advocacy, and systemic advocacy. Several members said that they wanted to be able to “give back” and to support people in similar circumstances in future.

In recognition of the fact that there are many people with intellectual disability who are unable to speak out and tell us their experiences - and that research tells us that these people are even more vulnerable to abuse – the project team also asked the PAG members to describe what they had witnessed happening to others in the criminal justice system. It became routine for PAG members to talk about other people they know who they perceived to be more vulnerable than themselves.

All PAG sessions and individual interviews were recorded. Members provided written consent for audio recordings and for their information to be used in the film *They Will Use My First Name* and in this report.

THEMES

Disability Rights

PAG members stated that their disability rights should be recognised when they are subject to the criminal justice system. PAG members strongly agreed that people with cognitive disability should never be placed in solitary confinement, given psychiatric medication to control their behaviour, or be restrained or shackled. All members of the group agreed that they should have access to safeguarding, support, and advocacy if they are in prison, and that workers should be trained in disability and trauma. PAG members discussed the need, while in custody, for free, unmonitored, unlimited telephone access to an external agency with the power to investigate and act.

Equal Treatment

“It’s about being treated as a human being.”

At the first meeting of the PAG, members were asked about their understanding of human rights, and specifically disability rights. Most members demonstrated some understanding of basic human rights, yet none were aware of the rights available to them as persons with disabilities. All members of the group said that in their criminal justice journeys they felt they have been treated as “sub-human”, “less valuable”, and as a “lost cause” because of their disabilities. They also talked about people they knew in custody who had more significant cognitive impairment than themselves, and that seeing those people in prison is “cruel”, “disgusting”, and “degrading.”

When asked about what they have witnessed of the treatment of others with disabilities involved in the criminal justice system, several members of the group described horrific experiences. Some PAG members had witnessed the extreme distress of other prisoners with disabilities including bronzing (faecal smearing), head banging, screaming, self-injury, and suicide attempts.

“We all bleed the same. We’re all human underneath.”

One of the strongest and most talked about problems raised by the PAG is the dehumanising experience of being called by surname or number. All members of the PAG said that their experiences of having their surnames used in court, and their Criminal Record Numbers (CRN) used in custody were degrading and humiliating. The PAG decided that the name of the short film that they produced would be *They Will Use My First Name*, in recognition of the importance of the use of first names as a quick, easy, humanising gesture that should be adopted across the criminal justice system.

“Use my first name.”

Group members shared how they had often felt that their disabilities had been used against them, as a reason to view them as incompetent. In many situations they felt that decisions had been taken away from them because of the assumptions made about their cognitive competence. They said workers and decision makers either felt sorry for them or told them that they were using their disability as an excuse. Members agreed that they want to be recognised as people with disabilities with disability rights.

“All my life I have never been believed.”

Being Believed

A strong theme that emerged in relation to the PAG members’ life stories was the need to be believed. An Aboriginal person who was interviewed said “it’s all about belief and belonging.” He believes that Aboriginal people with experience of the criminal justice system need to feel believed.

**“If you tell police you have a disability, they don’t believe you...
They think we’re spinning a bit of a yarn...”**

PAG members described how experiences of not being believed when they had been assaulted had led to them trying to present themselves as “tough”, “aggressive”, and “violent” so that they were less vulnerable to attack. PAG members described how experiences of not being believed had increased or exacerbated the trauma they had already experienced.

“I’ve tried to tell people what I’ve seen and experienced [in prison] and they don’t believe me.”

When discussing experiences of speaking out, reporting assaults, or telling their stories, members of the group acknowledged that speaking out comes at a cost. They identified fear of not being believed, fear of reprisal, fear of ridicule and a general sense of hopelessness as reasons they do not speak out. The cost to them is that they feel that they have given something of themselves, told their story, revealed vulnerability, and yet nothing changes. The group frequently made comments about not feeling heard, believed, or taken seriously. They said that at times when they have spoken up, they have been treated as troublemakers, or have been assumed to be lying. This has led to a sense of anger and apathy for members of the group, and several admitted that they remained sceptical about the reasons VALID is encouraging them to speak.

“When you are not believed you become invisible.”

In discussing the importance of life stories, several PAG members expressed frustration that often when they are arrested, they have no evidence that they have a disability, which leads to police not believing them.

“People don’t believe you when you have a disability.”

Quality of Life

Several members talked at length about having felt negatively judged since childhood where their behaviour was first described in negative terms. The group members agreed that negative judgement during childhood had led to lifelong feelings of rejection and lack of acceptance and belonging. The PAG members described how these feelings are compounded in the criminal justice system.

“I’ve had a constant struggle to be accepted.”

PAG members described quality of life as feeling loved and cared for, having fun, enjoying freedom, feeling safe, and being heard and respected. They said that loneliness, lack of social connections and difficulties in relationships often led to a poor quality of life.

“Not being heard stops you from having a good life.”

In relation to criminal justice system involvement, the factors that the PAG members raised as preventing a good quality of life were:

- Not knowing their rights, and not having them explained in an accessible way
- Being prevented from making their own decisions (both minor and major decisions)
- Not being allowed to speak (such as in court)
- Having court matters reported in the media
- Being talked about by professionals
- Feeling negatively judged
- Not being recognised as an individual
- Being treated like they are in the “too hard basket”
- Having supports and treatments forced on them
- Not having access to the type of support they feel would best fit them
- Lack of access to non-legal advocacy
- Feeling unsafe, scared, and mistrustful of criminal justice system professionals

Legal Processes

Many members stated that court processes felt unfair, excluded them from participation, and that most lawyers, magistrates and judges treated them with a deep lack of respect.

“They’re just for money. They don’t care about anyone.”

Members of the group stated that legal processes felt biased and did not take their disability or life history into account. They said that even though their lawyer is supposed to be on their side, often it does not feel that way. In many situations, PAG members described feeling that they had decisions removed from them by their own lawyers.

“I’m just a number to them.”

All members of the group felt very strongly that they should have the right to directly address judges and magistrates, and that court processes should include their voices and stories. Some members of the group referenced specialist court lists and programs, which they said offered a way for them to communicate directly with decision-makers. They said that direct communication made them feel heard, recognised, and respected.

In discussing court processes, some members of the group said that going to court feels like being treated like a child. They said that not having the opportunity to speak and be heard means that bad decisions are made for them, and often they are placed on orders that they do not understand, and that feel meaningless and ineffectual.

“They just treat us like cattle.”

One member of the PAG shared his experiences of contact with police and said that he has developed good relationships with many police members at his local station. He said that police are aware of which football team he supports, and that often when he is arrested a police officer will start a conversation or make a joke with him about football. He said that because of this, he felt the police already viewed him as a human being each time he was arrested.

Labelling and Discrimination

PAG members talked about the continual pathologising of their disabilities. They said they have been subjected to many “meaningless” psychological assessments. They said that constantly being assessed makes them feel labelled, demeaned, and demonised, and that after undergoing assessments they were often treated as inherently dangerous and deviant.

“They have always treated me like I’m dangerous. I’m a red flag.”

Members of the group unanimously agreed that they are not given the right disability support. They said that the supports they are given are usually focused on ideas of risk and paternalistic assumptions about their needs. Group members felt that the criminal justice system does not play any rehabilitative role. When asked about the programs and therapeutic supports available inside prison, group members said that they find them ineffectual, coercive, and frustrating. They all said that they have completed programs in prison to be made eligible for parole, or even out of boredom, but that lack of individualised support meant that the programs felt like “a joke.”

“I’m always treated like I’m a risk. That’s all I am: a risk.”

Complicated Lives

Most members of the PAG identified themselves as people who had experienced significant trauma in their lives prior to contact with the criminal justice system. All members of the group articulated histories of childhood deprivation, abuse, disadvantage, and poverty. Many members had childhood experiences of involvement in child protection systems and removal from their families. Many stated that those experiences, combined with lack of opportunity for education, experiences of bullying and neglect, led to their first contact with the criminal justice system. They described homelessness, problems with addiction, and untreated mental health issues as contributing to their overall sense of trauma.

“You’re useless. You’re nothing. You’re worthless. Heard this my whole life.”

“It starts at school. I got caned at school for behaviour. I was always called a dumb stupid mute because I had a hearing problem.”

Members described experiences of violence during their childhoods that made behaving violently “normal” to them. One member stated that violence and criminality was expected within his family.

Members of the PAG talked about ways in which their trauma histories manifest as adults. Several members stated that they had been diagnosed with Post Traumatic Stress Disorder (PTSD), that they experience hypervigilance, and that they can find it difficult to be in a room with other people.

“You know, I’m always scanning for danger.”

All members of the PAG emphatically stated that the criminal justice system causes trauma. Whilst experiences of arrest and going to court were described as stressful, difficult, and frightening, it was experiences of imprisonment which were described as dangerous, traumatic, disabling and life changing. Many members described the terror of their first experiences of prison.

“Everyone in prison has trauma. I’ve seen people try to kill themselves.”

“A lot of people, when they walked in, they didn’t have disabilities. But when they leave, they have disabilities. Why? Because jail makes...you feel like an animal. They make you feel like you’re nothing. It makes people cold.”

Life Story

All members of the PAG commented at various times, and in different ways, on the importance of criminal justice system staff gaining an understanding of their life histories. This was especially so for workers in positions of authority, and decision-makers. They described frequent experiences of not having their disabilities adequately recognised, understood, and considered, and conversely, where recognition of their disabilities led to discrimination and humiliation.

“They don’t understand where I’ve come from. I’ve been through a shitstorm, but they don’t get that.”

PAG members described the importance of ‘life story’ recognition that is multi-dimensional and intersectional. PAG members strongly felt that alongside their intellectual disabilities, they need criminal justice system professionals to also recognise the effects of:

- Systems and institutional trauma
- Persistent poverty, homelessness, addiction, mental illness, and removal from family
- Historical bullying and discrimination
- Frequent labelling as dangerous and risky
- Pathologising of their disabilities

Group members said they had not had good role models in their lives, support to make decisions, guidance and mentoring, or freely given relationships.

“My mother...used to tell me to go out and steal stuff, to help with the family...I thought I was doing the right thing. I should’ve known that it was wrong.”

Being in Control of Their Own Stories

PAG members raised issues relating to the fact that in most situations, they do not have control over the ‘narratives’ that surround them. A frequent experience PAG members discussed was encountering professionals who have access to historical information, such as their criminal record, psychological reports and other diagnostic or clinical information. PAG members felt that the knowledge gained through their historical information enabled a power imbalance. The PAG members agreed that although some of their life story might be detailed in psychological assessments, the meaning behind their experiences was lost without them being able to tell their own story.

“It’s all very well to know what’s wrong with me from a piece of paper, but I want to tell them what’s happened to me, in my words, in my way, tell them who I am.”

Group members described situations where they had been arrested and custodial staff had not believed they had a disability, where they felt that they were just seen as a problem not a person, and where describing their support needs had been met with disbelief. They particularly wanted to have some personal information recorded with police and courts for when they are arrested and appear in court.

Members of the group discussed developing an individual profile communication tool with three functions:

- Humanising: people with disability can disclose personal information about themselves and their interests so that when they are arrested police can start a ‘normal’ conversation with them to make them feel safe and human
- Disclosing disability: people with disability can provide some information about their disability, and describe what they find difficult, stressful, and traumatic
- Describing support needs: people with disability can describe their support needs, give instruction on how to interact with them when they are stressed, who to contact for them, and what information they need

“We need a card, or a USB stick, with the information we want on it, so we can tell people who we are and what we need.”

Abuse

Some members of the group described incidents where they had been assaulted by police and prison officers. Those members who reported assaults also reported regular use of abusive and demeaning language by police and prison staff, verbal taunts about personal characteristics, and comments about their families.

“When you get treated that badly, it makes you see things differently.”

Members of the PAG described frightening experiences in custody where their clothes had been removed, they had been isolated and shackled, had witnessed assaults, suicides, and other deaths. Two members described the fear they had experienced when they became aware that the buzzers in their cells had been turned off so they could no longer contact anyone for assistance.

“When you buzz too much, they turn the buzzers off so you can’t contact anyone and if you press the buzzer during an assault, you’re a lagger.”

Several PAG members discussed the lack of safety in prison for people with disability. They stated that disclosing disability makes them unsafe, and that being diagnosed and recognised as a person with disability makes them a target for abuse.

“You’re the laughing stock. You have a big target on your back. They call you retard, spastic, a dog – everything.”

All PAG members who had spent significant periods of time in custody discussed assaults they had experienced and witnessed perpetrated by other prisoners and prison officers. They also discussed the incidents they had been involved in or witnessed where prison officers had not intervened in fights.

“The guards made a bet on how long he could last. He copped it. He copped so much damage he became disabled. When he came out, his missus left him. They think it’s fun to play with our lives.”

One member of the group talked about how his father was well known in the prison system. Prison staff told him he was just like his father and would always be returning to prison. Several members described the anger and humiliation they had felt when, as they were released from prison, officers had said “see you next time” and “you’ll be back.”

Torture

Torture was a word that was used in several contexts by PAG members. They said that they had experienced mental suffering that was deliberately inflicted as punishment. Several members of the PAG described lengthy periods of time in management units as punishment.

“Torture is part of the punishment. I did three months in management. When a prisoner died, I heard officers laughing and saying, ‘another one dead’”

The PAG members said that solitary confinement is torture, and that they have had experiences within prison that they would define as torture. Some members of the PAG also described other people with intellectual disability they have known in prison, and their perceptions of those people being tortured by being placed in isolation or in psychiatric units for extended periods.

“In the psych unit, I had to wear their clothes...big baggy stinky clothes some other criminal has worn. Wearing someone else’s underwear... most people think it’s nothing. It’s nothing until you walk those steps. Then you won’t say it’s nothing.”

Some members of the PAG described prison experiences as causing permanent disability through psychological harm. All members commented on the negative effects imprisonment has had on their mental health, and the permanent damage that their prison experiences have caused for them. Additionally, they made comments about times when they had witnessed the deteriorating mental health of other prisoners with intellectual disability, saying that they had known people who had come into prison who had been ‘broken’ by the experience.

“I came out an angry mental case. I first went in at 17. I was scared.”

All members of the PAG described strip searches as degrading and humiliating. One group member said that being strip searched reminded him of the sexual abuse he experienced as a child, and that having to be naked in front of strangers made him feel fearful and unable to control his emotions and behaviour. Members of the group described situations where they had been strip searched and officers had made comments about their bodies or searched them with the presumption of concealing contraband.

“They shouldn’t do [strip searches]. It reminds me of the past. It feels shocking. I feel suicidal afterwards. Sometimes it feels like just another type of sexual abuse.”

Witnessing the suffering and deterioration in their fellow prisoners they also described as a form of torture. They described torture and suffering in prison as a transformative experience that changed their perspectives on life and humanity. Some members stated that following their early prison experiences, they became ‘hard,’ ‘cold’ and developed a sense of mistrust and hopelessness.

“It’s cruel. I wouldn’t even treat an animal like that.”

Disability supports in the community

Support in the community was discussed by the PAG members as a crucial element for success in the community. PAG members said that people with intellectual disability who become involved in the criminal justice system require greater support in the community than others in order to live meaningful lives, but also to avoid reinvolvement in the system.

“I needed more help than other people.”

PAG members stated that the principal elements of good support in the community are:

- Stable homes
- Support workers who have the rights skills and attitudes
- Therapeutic supports, and
- Opportunities for education, social participation, and employment

“We should be in the disability system.”

PAG members said people leaving prison need a high level of support early in their post-release period and reducing supports should be done carefully and in consultation with the person with disability and people they trust. All members of the PAG felt strongly that people with intellectual disability who offend should be managed and supported within disability support systems rather than the criminal justice system.

Behaviour Support

In discussing behaviour support, members of the PAG said that anyone with an intellectual disability involved in the criminal justice system should be provided with behaviour support in their NDIS plan. They said that in most situations, a person's offending and problematic behaviour is related to their disability. PAG members described times where they had committed offences due to a range of issues such as:

- Poor understanding of the legality of actions
- Poor problem-solving skills
- Poor emotional regulation
- Feelings of hopelessness that led them to not care about consequences
- Feeling that they were not being heard or listened to
- Being influenced, manipulated, or exploited by others
- Loneliness and lack of social skills

“Some people don't have much control over their behaviour.”

PAG members enthusiastically agreed that expert positive behaviour support is essential. Many members were exasperated that they had not had access to positive behaviour support when they were younger. The PAG members identified that support addressing the reasons for, or function of a behaviour, rather than labelling it criminal, is a more positive and empowering way of managing their behaviour. Many PAG members stated that they had been in situations where they had been forced to accept therapeutic interventions that felt pointless and demeaning. Positive behaviour support, by comparison was viewed as a relevant and positive type of support. The PAG members said that they need behaviour support that follows them into prison and is available in the community, seamlessly provided by an expert practitioner they trust and feel safe with.

“You should have a behaviour support person available when you feel like offending.”

National Disability Insurance Scheme (NDIS)

Most members of the PAG stated that the NDIS was confusing, frustrating, and inaccessible. Several members of the PAG stated that they had not attended any of their NDIS planning meetings: they had not been invited. In general, the members said the NDIS was largely irrelevant in their lives except for the fact that the funding was linked to some of their supports. When asked whether they believed their disability related support needs should be funded separately to their other needs (such as offending, psychological, support related to trauma, employment, and education) they said support should be holistic.

Members of the PAG stated that they have less interest in the type of support provided (for example, a disability support worker over a behaviour support practitioner), and more concern over the ways in which support staff behave, their attitudes and the tasks they perform.

Support in Prison

All members of the PAG identified that support in prison is often lacking, or absent. They described experiences of fear, confusion, and loneliness where they had wanted to talk to someone they could trust. Often the PAG members said they were able to talk to prison staff, but what they wanted was someone independent. PAG members stated that what was missing was support based on what they felt their needs were, not on what they were assessed by others as needing.

A trusted person did not need to be a clinician, therapist, or counsellor, but instead needed to be someone who had the capacity to listen with empathy, provide advice, support them to understand information and processes, and advocate for their needs. They were clear in stating that the purpose of this type of support should be to help people with intellectual disability cope with their circumstances, manage their feelings and prepare for the future. This type of support, according to the PAG members, should not be based on their offending, but on their self-identified emotional needs.

One member of the PAG said that talking in prison is dangerous because other prisoners may make assumptions about what is being talked about. They said that all people with intellectual disability need someone they can talk to, and that person should be from outside the prison system.

“People are paranoid. It isn’t safe to talk to talk in prison. If people see you talking to a counsellor they think you’re going to dog on them and then you get got.”

Another PAG member talked about feeling as if he was being forced to talk, and that the people who wanted him to talk did not understand him. He said he did not understand their role, or why they were there.

“I wasn’t allowed out until I saw a psych. I ended up with a whole lot of workers I didn’t want, that everyone wanted me to talk to. Four or five people would come to see me every day. They would just talk at me about stuff I didn’t understand. I hated it. When I’m told I have to talk, I don’t say anything.”

PAG members said they need:

- Information in clear, plain language with important concepts using pictures
- Workers who demonstrate empathy and compassion, and who take a non-blaming, non-directive, non-judgemental approach
- Clear explanations from workers about the purpose of support (why I’m here) and the expectations and limits of the worker’s role
- Support that is independent of the criminal justice system from workers who are not obliged to inform the prison about private conversations
- Someone whose role and time for appointments is flexible

Support at Court

Members of the PAG said court experiences are often confusing, frightening and disempowering. They said that they often didn’t understand their court matters and didn’t have anyone to clearly explain the process. PAG members talked about lawyers using “court language”, stating that magistrates and lawyers talk about them as if they were not in the room. They described feeling angry and humiliated in court and said that they don’t even bother listening to what is happening during proceedings because they:

- Do not understand the charges, court processes and rules of evidence
- Lack support to attend court and understand procedures (such as where to wait, who to talk to)
- Are unable to speak directly to the judicial officer
- Perceive lawyers and judicial decision makers as “pompous”, uncaring, and unskilled
- Believe legal processes are irrelevant and unfair

One member of the PAG described positive experiences with a lawyer who had taken time to explain court processes, explained what she was doing as she was doing it, and was respectful in communicating important information. The PAG member described how his lawyer supported him to make decisions by talking through the options and likely outcomes of each choice.

Other PAG members described positive experiences in specialist court hearings because they had the opportunity to speak directly to the judicial decision maker. They said it was empowering because they felt heard, understood, and believed, and that it led to better court outcomes. All members of the PAG felt that being able to speak directly to the judicial decision maker to tell their story was vital to feeling as if they had received access to justice.

The Characteristics of a Good Worker

PAG members referred to workers as anyone who provided support - disability support workers, magistrates, police and other professionals. This broad definition was important because while they focused on how to identify good supporters, they also made important comments about how they want to be treated when encountering other criminal justice system professionals who they do not identify as supporters or allies.

The Power of Listening

Members of the PAG discussed the importance of being listened to. They described experiences of being talked over, and having their opinions dismissed. They said that anyone working with them in any capacity must provide them with encouragement and opportunities to speak.

“He just listens to me. He listens to everything. He really gets me, and he tells me when I get it wrong.”

The Importance of Empathy

PAG members made many comments about empathy and the impact this has on their ability to trust professionals, provide information, make decisions, and manage their emotions. They said that during arrest, their fear and confusion sometimes led to them behaving aggressively. Empathy was identified as a key element to creating a sense of common humanity, and a means of providing emotional safety.

“A lot of them need more empathy.”

Believing and Acknowledging

Being believed was a critical element of creating trust and safety for members of the PAG. The PAG members felt that while the details of their stories may not be perfectly accurate, and they may not be able to narrate their experiences as clearly as people without intellectual disabilities, they want the feelings and experiences behind the story to be believed.

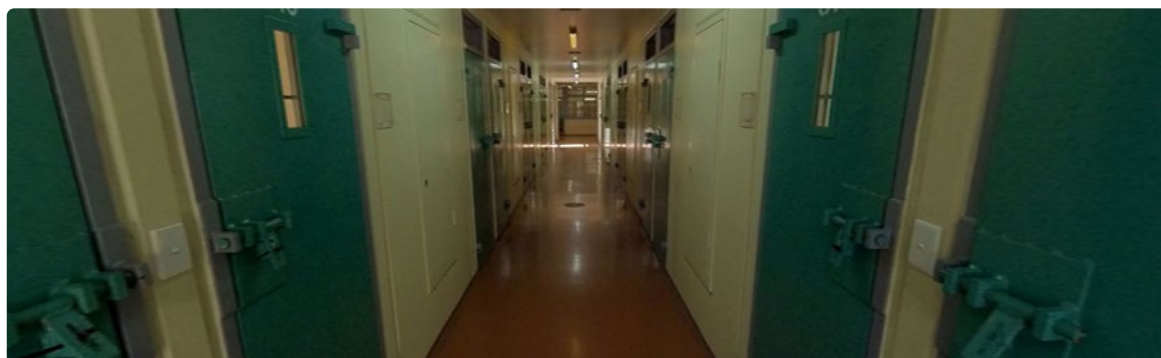
Communication Skills

It was vitally important to all PAG members that good supporters and all other professionals they encounter have the capacity to communicate effectively. PAG members felt that lawyers and judicial officers in particular lack communication skills, and that the ability to speak plainly, explain concepts, check for understanding, and allow time for comprehension are critical. Members of the PAG also discussed the role of lawyers in supporting their decision making. Many members said that when they go to court, they feel that their lawyer simply tells them what is going to happen, without explaining and giving them choices.

Being Authentic

PAG members said that when they trust a worker, they feel that they can be more open and honest. Group members said that they can often tell from unspoken cues, such as body language and eye contact, whether they can trust a new worker. PAG members also said that they often observe the language workers use, and try to gauge whether the worker views them primarily as a client or a human being. In situations where PAG members feel that workers are using overly complex language, or treating them like they are inherently different, they are unable to trust workers or form an alliance. The PAG members stated that the best workers are those who are “real”, not “fake”.

“When you get a good worker, you’ve won the lottery.”



3 | Professionals Forum

Due to COVID-19 restrictions, VALID staff hosted the professionals forum online. The purpose of the forum was to understand the views of people who work in the disability and criminal justice systems with people with intellectual disabilities. Organisations who attended included:

- Department of Families, Fairness and Housing,
- Department of Justice and Community Safety
- Office of the Public Advocate
- Magistrates Court of Victoria
- Victoria Legal Aid
- Community Legal Centres
- Not-for-profit community organisations
- National Disability Insurance Agency
- NDIS-funded service providers

Forum presentations were made by:

- A member of the Justice for All Peer Action Group who presented his experiences of the criminal justice system in Victoria
- A prominent self-advocate from Sydney who presented about his experiences in the criminal justice system as well as the work of the Intellectual Disability Rights Service and NSW Council on Intellectual Disability in justice advocacy and cognitive disability diversionary programs
- Dr Claire Spivakovsky from the University of Melbourne presented the research she conducted for the project
- Stan Winford, the associate director of RMIT's Centre for Innovative Justice (CIJ) who presented on the organisation's previous and current work

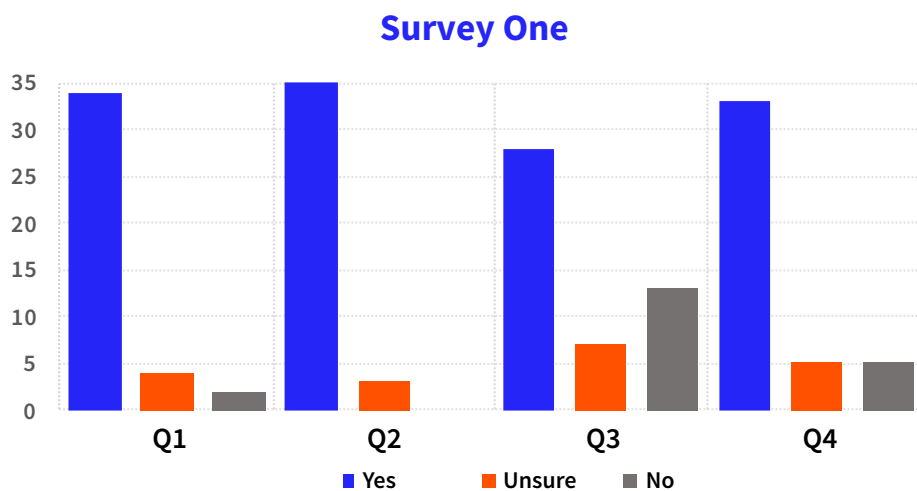
Forum attendees were asked to complete two surveys and participate in small group discussions which were recorded.

SURVEY RESPONSES

Survey questions were developed based on discussions during PAG meetings and recommendations for changes to the criminal justice system that PAG members had made. The surveys were designed to test the PAG’s ideas.

Survey One

1. When people with intellectual disability offend, do you think there should be ways that they can be diverted from the criminal justice system?
2. Do you think that most people with intellectual disability who offend should be entitled to funded disability supports that assist them to manage their behaviour?
3. For people with intellectual disability, do you think their offending behaviour is often related to their disability?
4. Do you think there are some people whose cognitive impairment is so significant that they should never go to prison?

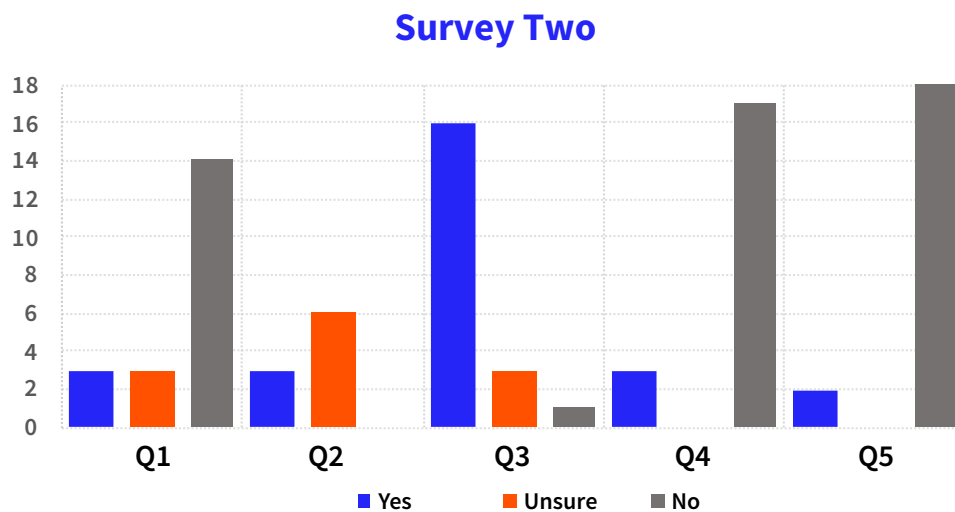


The results above indicate that of the 35 people who completed survey question one, the majority agreed that people with intellectual disabilities who offend should have opportunity to be diverted away from the criminal justice system (89%). Of the 37 people who completed survey question two, ninety-two percent said that people with intellectual disabilities should be entitled to funded support to manage behaviour. Most people agreed that for people with intellectual disability, their offending behaviour is often related to their disability (71%). Eighty-seven percent agreed that some people’s cognitive impairment is so significant they should never go to prison. The above results were consistent with the views of the PAG members.

Survey Two

1. When people with intellectual disability are involved in the criminal justice system do you think they have access to fair legal processes?
2. Are they treated humanely when they enter prison?
3. Are they discriminated against because they have an intellectual disability?
4. Are they provided with adequate support for them to understand legal processes?
5. Are they provided with adequate support to make important decisions in their lives?

Fewer people responded to the second survey. Of the 20 people who responded to the first question, seventy percent agreed that people with intellectual disabilities are denied fair access to legal processes. Eighty percent agreed that people with intellectual disabilities are discriminated against because of their disability. Eighty-five percent agreed that people with intellectual disability are denied adequate support to understand legal processes, and ninety percent indicated they believe people are not provided with adequate support to make important decisions in their lives. Only nine people answered question two, and the majority (66%) were unsure about whether people with intellectual disability are treated humanely when they enter prison.



The response to survey question two may be related to the roles and positions of many of the forum attendees, as many work in supportive roles in the community, NDIS funded services or policy and decision making. Fewer attendees had direct experience of the prison environment.

GROUP DISCUSSIONS

Forum attendees were divided randomly into five group breakout rooms to discuss a question or set of questions. The questions the groups were asked were based on the project's Rapid Evidence Assessment and discussions that took place during PAG meetings. The questions posed to each group were different, however similar themes emerged across the groups. It is acknowledged by the authors that minimal attendance by NDIA staff at the forum may have led to many forum attendees feeling more comfortable discussing the problems of the NDIS.

The System is the Problem

The strongest theme to emerge from the separate groups of professionals was the problems inherent in systems that govern the lives of people with intellectual disability involved in the criminal justice system. Regardless of the actual questions asked, all groups made specific comments about their frustrations about the interface between the criminal justice system and the NDIS. Many commented on the need for “throughcare”, “wrap-around services”, and “holistic support” and their frustration with current interface failures. Many cited the need for more cooperation between state systems and the NDIS, and the problems they see with bureaucratic gatekeeping that prevents people from receiving support. They also talked about the need for improvements to NDIS planning, and increasing access to case coordination, case management, advocacy, and transition services to support people leaving prison and re-entering the community.

Consistent with the views of the PAG members, disability advocacy was cited by several forum members as a critical service for people with intellectual disability involved in the criminal justice system. Many forum members said that their roles involved a degree advocacy work but that strong independent advocacy is needed.

Several people across separate groups talked about the schism between justice-related needs and disability-related needs which prevents them from doing their jobs effectively and denies people with intellectual disabilities the supports they need, and also breaches their human rights.

“I don't know what the solution is...when you've got different layers of government arguing over who's responsible for funding what... but I just know there needs to be a reconceptualisation of how we understand offending behaviour in this cohort.”

This view was consistent with comments made by PAG members who stated that attempts to split their disability-related needs and justice-related needs is dehumanising and does not work.

The other schism that was described as unfair by several forum attendees was the fact that NDIS supports are not readily available to people when they are in custody. One professional talked about the need for people with disability to have access to assessments, such as those conducted by an Occupational Therapist whilst in custody.

“People have the same needs in custody as they do in the community.”

Chaos and Confusion

A theme that was raised in several groups related to the difficulties in navigating different systems that rely on different criteria, different jargon, and different legislation. They said that current systems are unwilling to take responsibility for meeting people’s needs. Several professionals stated that their experience was that NDIA staff often did not understand or know about Victorian legislation or the way Victoria’s criminal justice system operates, and therefore had refused to fund support that they arbitrarily deemed ‘justice-related.’ This was raised by some professionals in the context of Victoria’s Supervised Treatment Orders (STOs) under the *Disability Act 2006*.

Some professionals stated that they had found that NDIA staff did not fully understand the time limited nature of legal orders and so did not approve funding for disability supports. Without understanding that there is an end point to the state government’s involvement with a person on a legal order, some planners determined that supports should be provided by state systems that people no longer had involvement with, or entitlement to use. Similar issues were raised by other forum attendees who described the difficulties they had experienced in court where judges and magistrates did not understand the complexities of the NDIS leading to poor outcomes for the client.



Behaviour Support and Restrictive Practices

Like the PAG members, the forum attendees agreed that behaviour support should be viewed as an entitlement, or “opt out rather than opt in” support for people with intellectual disability who offend. The forum professionals stated that skilled behaviour support may also serve the preventative and diversionary function of minimising contact with the criminal justice system, because behaviours of concern would be better managed within the community to begin with.

Some forum attendees talked about the importance of information sharing within and between systems, so that when people with intellectual disability do have contact with the criminal justice system, information about their behaviour support needs can be provided to justice system professionals to enable better support. They said that this may enable people to be released more quickly from custody as risks may be minimised through the provision of behaviour support services.

One forum professional commented on the use of restrictive practices acting in place of a legal order, whereby the restrictions imposed are not reduced over time, but used as a long term strategy to manage behaviour. This forum attendee expressed concern about behaviour support being misused or misrepresented as a long-term restrictive option rather than a support that enhances quality of life and wellbeing.

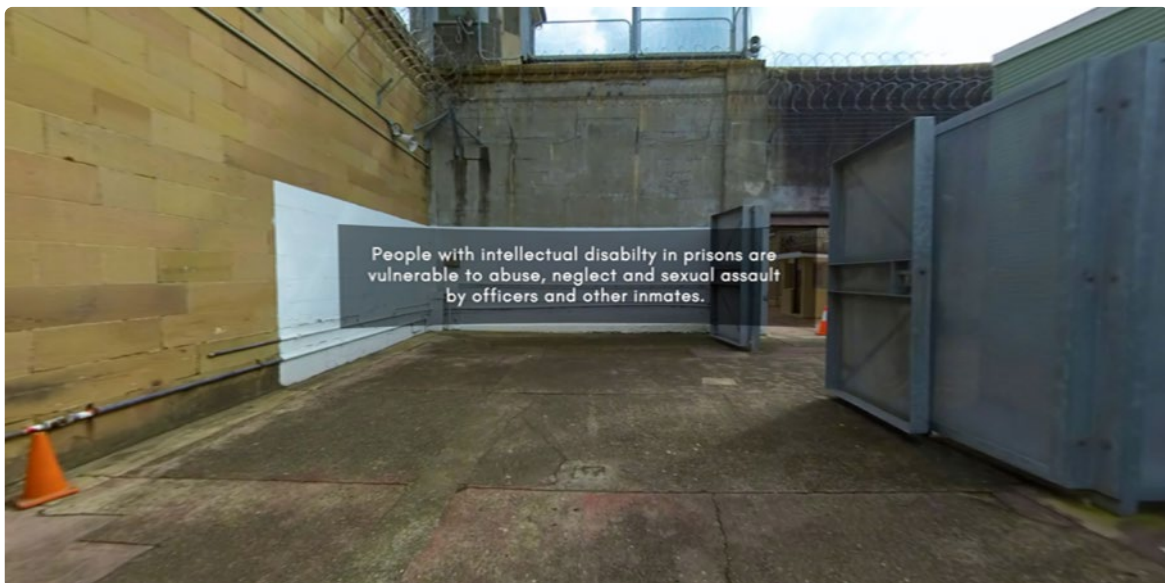
“It’s extremely concerning, this idea of restrictive practices being co-opted...as a long-term way of managing risky or potential criminal behaviour, instead of... being reduced over time.”

Forum professionals agreed that access to consistent behaviour support both in custody and in the community is vital, and an element of ensuring success. Some forum attendees raised the issue of behaviour support being removed from NDIS plans because the person’s behaviour was viewed as a ‘life choice’ rather than a disability-related support need. One attendee had witnessed the removal of behaviour support funding from an NDIS plan because some of the behaviour support practitioner’s sessions had focused on substance use issues.

Workforce Issues

Forum attendees said that there are broad problems with the NDIS workforce including lack of empathy, lack of training, and limited knowledge of disability practice. They expressed frustration that the NDIA do not have the skills and knowledge to plan with and for people with intellectual disability involved in the criminal justice system. One forum attendee stated that people with intellectual disability need support to attend NDIS planning meetings, because they are so confusing, and many people are not able to describe their own needs.

“...people have found themselves rushed into an NDIS planning situation...the support to articulate the person’s needs isn’t there...and also that dance of having to be able to communicate your needs and experiences through...deficit and strengths-based language...for example proving that you are disabled enough to warrant a certain type of funded support, but not so disabled that you can’t realistically achieve the goals.”



Conclusion

The primary aim of the Justice for All project was to create a solid evidence base upon which to make recommendations for change. The recommendations that we make in this report are a call to action across the disability and justice sectors, and to both the state and federal government to give real access to human rights for people with intellectual disabilities involved in criminal justice systems. Australia is a wealthy nation and should afford our most marginalised citizens what they are entitled to and deserve. People with intellectual disability and their families have been fighting for their human rights for decades in Australia. Many have only recently emerged from large institutions. The NDIS is now eight years old. But some people are being left behind because they are labelled hard-to-reach, and because their behaviour is considered offensive. Realising disability rights for people with intellectual disability involved in the criminal justice system means shining a light in the darkest corners.

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End Notes

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ⁱⁱ Report of the Law Reform Committee for the Inquiry into Access to and Interaction with the Justice System by People with an Intellectual Disability and Their Families and Carers (2013). https://www.parliament.vic.gov.au/file_uploads/Law_Reform_Committee_-_Access_to_and_interaction_with_the_justice_system_by_people_with_an_intellectual_disability_and_their_families_and_carers_-_Final_report_76JG2vK1.pdf

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