

CONTENTS

I	INTRODUCTION
III	A GUIDE TO THIS REPORT
IV	RECOMMENDATIONS
1	BACKGROUND AND METHODOLOGY
3	BACKGROUND TO THIS RESEARCH AND METHODOLOGY
5	BENEFITS AND CHALLENGES OF THIS APPROACH TO RESEARCH
7	KEY CONCEPTS UNDERPINNING THIS REPORT
9	ABI: WHAT IS IT, WHAT CAUSES IT AND WHAT ARE THE CONSEQUENCES?
11	WHY ARE PEOPLE WITH AN ABI OVER-REPRESENTED IN THE CRIMINAL JUSTICE SYSTEM?
19	THE JUSTICE USER EXPERIENCE
21	INTRODUCTION
22	WHO ARE THE JUSTICE USERS?
23	JOURNEYS THROUGH THE CRIMINAL JUSTICE SYSTEM
28	HOW PEOPLE WITH AN ABI EXPERIENCE THE CRIMINAL JUSTICE SYSTEM
49	RESPONDING TO JUSTICE NEEDS
51	INTRODUCTION
52	IDENTIFYING JUSTICE USER NEEDS
60	HOW SHOULD THE SYSTEM RESPOND?
120	CONCLUSION
121	APPENDICES TO THIS REPORT
122	APPENDIX 1: FURTHER BACKGROUND TO THIS REPORT
129	APPENDIX 2: WORKING WITH THE JUSTICE USER GROUP – JESUIT SOCIAL SERVICES
142	APPENDIX 3: PARTICIPANT INFORMATION AND CONSENT FORMS AND INTERVIEW QUESTIONS
147	APPENDIX 4: DRAFT EASY ENGLISH INFORMATION SHEET REGARDING THE ITP PROGRAM

RECOGNITION RESPECT AND SUPPORT



Enabling justice for people with
an Acquired Brain Injury



CENTRE FOR INNOVATIVE JUSTICE
JESUIT SOCIAL SERVICES

RECOGNITION RESPECT AND SUPPORT



CENTRE FOR INNOVATIVE JUSTICE
JESUIT SOCIAL SERVICES

INTRODUCTION

“I’ve thought
about what I want to
say and then I don’t
even say it because
I forget about it before
it even comes out
... of my mouth...”

The Enabling Justice project is a response to one of the symptoms of the failure of the criminal justice system. If nearly half of all adult male prisoners and more than one third of adult female prisoners in Victoria have an Acquired Brain Injury (ABI), compared with about two per cent of the general population, something must be wrong with the system. Like the prisons it feeds, our criminal justice system is, in fact, full of people who have an ABI. Yet the basic supports accepted as essential for people with other kinds of disability in other contexts are lacking – leaving people with an ABI to fend for themselves in a system that most people without an ABI would find overwhelming.

The consequences of this failure are evident on a number of fronts. Government figures indicate that 42.9 per cent of prisoners—many of them prisoners with an ABI—will go on to re-offend and return to prison within two years of their release. By failing to meet the needs of people who have an ABI, the criminal justice system is also failing the community who expect, among other things, that the criminal justice system will contribute to community safety by changing the trajectories of people who have broken the law.

This report—and the project which sits behind it—is about starting to address these systemic failures, highlighting the fact that when a system is not designed with its end-users in mind, when it does not respond to their needs, that system is not going to be effective. The Enabling Justice project, however, has not just been about identifying problems—nor even solely about recommending ways to address them. Instead, the Enabling Justice project is about doing research, doing reform and doing system-design differently, placing the lived experiences of the users of this system—people with an ABI—firmly at the centre.

The report is not structured around the usual sequential and institutional criminal justice system perspectives of 'police, courts and Corrections', though interactions with these institutions guide the journeys that users of this system take through it. Rather, in keeping with the lived experiences of the project participants from which it is drawn, the report is structured to reflect the ways in which people with an ABI experience these interactions.

The structure of this report is intended to make it clear that within the criminal justice system, people with an ABI have a range of interests and needs—in this report we have identified these broadly as recognition, respect and support—which are rarely met. As the report shows, the failure to deliver recognition, respect and support makes the system inaccessible and ineffective for people with an ABI. Unless these needs are met, the criminal justice system will continue to fail to provide equal access to justice for people with an ABI and do nothing to address their over-representation in our prisons.

It has been said that the criminal justice system 'shows little respect for people who offend. They are typically seen as wholly unworthy people who deserve little more than blame, pain and punishment.' This report, by recognising the importance of listening to those with the most at stake in addressing the failure of our criminal justice system to meet the needs of people with an ABI, seeks to demonstrate the value of a different approach.

A GUIDE TO THIS REPORT

This report is likely to be read by a broad range of people, each with different levels of knowledge and interest about its subject matter. This section is intended to serve as a guide to the report and what different readers might gain from it.

SECTION 1

Section One of the report provides a background to the project and the challenges and opportunities afforded by its methodology. It also provides an explanation for those who may be unfamiliar with an ABI. It describes the causes and consequences of ABI, how different people experience ABI, and the ways in which it can propel people into contact with the criminal justice system, and work against them when this contact occurs. Section One also explains the nature and extent of the over-representation of people with an ABI in the criminal justice system, and its intersection with disadvantage and trauma. Readers with limited knowledge of ABI and the factors contributing to its prevalence in people who come into contact with the criminal justice system will benefit from reading this part of the report first.

SECTION 2

Section Two captures the lived experience of individuals who participated in the Enabling Justice project—people with an ABI who have been in contact with the criminal justice system. It begins by following the journeys of two project participants through the criminal justice system. These journeys document early life histories of trauma and disadvantage exposing these participants the risk of sustaining an ABI, and the consequences when they encounter a criminal justice system ill-equipped to recognise or respond to their needs. The remainder of Section Two builds a picture of the criminal justice system as it is experienced by people living with an ABI, drawing upon interviews with all of the project participants. Themes of confusion and fear, lack of recognition and respect and an absence of support emerge, with project participants describing a system that fails to meet their needs. A framework for identifying and understanding these needs—recognition, respect and support—guides the remainder of the report.

SECTION 3

Section Three explores what recognition, respect and support mean for the project participants, and draws on their insights to develop responses supplemented by research and consultation with stakeholders in the criminal justice system.

RECOMMENDATIONS

RECOMMENDATION 1

That the Victorian and Commonwealth Governments both contribute to funding a campaign to raise awareness about ABI; its causes; known risk factors, symptoms and how to seek help.

RECOMMENDATION 2

That the Victorian Government continue with its commitment (in response to the recommendations of the Royal Commission into Family Violence) to undertake research into the prevalence of ABI among victims and perpetrators of family violence, requiring the research to be user-centred and to include the identification of the particular support needs of victims and perpetrators of family violence who have an ABI.

RECOMMENDATION 3

Staff in Family Violence Safety Hubs should receive training about ABI and its links with family violence, including training to conduct routine ABI screening, and information about confirmed or suspected ABI should be recorded on family violence risk assessment tools and the family violence information sharing platform.

RECOMMENDATION 4

All people who work within the criminal justice system must be educated about the circumstances and needs of people with an ABI and able to recognise people with an ABI and respond appropriately. Additionally, in recognition of the large number of people with support needs in contact with the criminal justice system, people who work within the criminal justice system must adopt a precautionary approach towards all people in contact with the system.

RECOMMENDATION 5

That the Victorian Government introduce an information sharing regime for the criminal justice system, that has the capacity to record a person's needs, diagnoses, and their support professionals where the sharing of that information is for the purpose of benefiting that person and that person provides their fully informed consent. Such a regime should enable sharing of health information between agencies, including non-government community support organisations who support offenders, so that information follows an individual through their entire experience with the criminal justice system.

RECOMMENDATION 6

That the Victorian Government establish a working group comprising representatives of criminal justice system organisations and justice users with a range of disabilities to identify the information sharing protocols for the information sharing regime.

RECOMMENDATION 7

That a common screening tool be designed which workers across the criminal justice system can be trained to use for the purpose of identifying a person with a suspected ABI until a neuropsychological assessment is available, so that a person's needs are recognised and access to appropriate support and programs are offered at the earliest opportunity.

RECOMMENDATION 8

That all programs, services and organisations that form part of the criminal justice system, should be designed with a human-centred approach, to enhance access to justice and procedural justice for all who have contact with it.

RECOMMENDATION 9

That the Department of Justice and Regulation fund a criminal justice advocacy and support service which offers support to persons with a cognitive disability or complex needs at any point of their interaction with the criminal justice system, including police, courts, corrections and prison.

RECOMMENDATION 10

That Victoria Police's work to implement recommendation 5 of the 'Beyond Doubt' report to improve communication and translation of documents into Easy English be extended to benefit defendants and suspects, not just witnesses and victims of crime.

RECOMMENDATION 11

That in implementing Recommendations 42 and 49 of the Royal Commission into Family Violence, and improving family violence education at all levels of the organization, Victoria Police also seek to provide all of its members with regular and ongoing training about the links between family violence and ABI, in particular for women who come into contact with the criminal justice system as both victims and offenders and the need for sensitive and appropriate responses.

RECOMMENDATION 12

That Victoria Police require members to notify all people who it seeks to interview about the availability of the Independent Third Person. One way of doing this might be the provision of an Easy English flyer, to be provided to suspects and witnesses, as well as to guide verbal communication regarding the ITP.

RECOMMENDATION 13

That a review be conducted into the structure and resourcing needs of the Independent Third Person program, currently delivered by the Office of the Public Advocate, enabling the program to be strengthened and funded to meet growing demand, and so that people can confidently request the presence of an ITP without fear of significantly lengthening their time spent in police custody.

RECOMMENDATION 14

That Victoria Legal Aid continue with its efforts to review and redesign the delivery of its criminal law services (starting with its duty lawyer services) using a human-centred approach, that engages people with a broad range of needs, including people with an ABI. Any such design should consider:

- the extent to which further skills training is required for VLA lawyers, but also how services can be structured to ensure clients have adequate time to speak with a lawyer, in an appropriate manner and environment, about their case and their personal circumstances; and
- how other professionals such as social workers might be included in the model of service provision to help support and better communicate with clients who experience complex needs.

RECOMMENDATION 15

That the Victorian Government enhance the funding it provides to VLA, so that it can reduce the demands on lawyers (especially duty lawyers), enabling them to spend sufficient time with clients, to identify relevant personal circumstances, including ABI.

RECOMMENDATION 16

That solution-focused courts, in particular the Assessment and Referral Court model, be expanded to all courts in Victoria. Until this is possible, at every court, introduce the two key elements of solution-focused courts: judicial monitoring (via the use of part heard lists, informal seating arrangements) and CISP support, and that government seek to appoint judicial officers and Magistrates who demonstrate a commitment to therapeutic justice.

RECOMMENDATION 17

That the Department of Justice and Regulation make training available to all staff (including judges and Magistrates) employed at Magistrates and County Courts around procedural justice and how to implement procedural justice into court practices.

RECOMMENDATION 18

That section 80 of the Sentencing Act 1991 (Vic) be amended to make Justice Plans, and the necessary support from Department of Health and Human Services, available as a sentencing option to people with an ABI, in addition to people with an intellectual disability.

RECOMMENDATION 19

That Corrections Victoria introduce mandatory trauma-informed practice training for all custodial officers and community corrections officers as well as training around recognising and responding to people with an ABI.

RECOMMENDATION 20

That Corrections Victoria promote a strong culture of commitment to rehabilitation within its workforce by reviewing entry and training requirements for all staff.

RECOMMENDATION 21

That Corrections Victoria introduce a non-custodial case management team to work with prisoners (or at least to work with prisoners who are identified as having an ABI, mental illness or complex needs) to support them in the prison environment and reduce their likelihood of re-offending.

RECOMMENDATION 22

That Corrections Victoria intensify the support available to people who are undertaking Community Corrections Orders and have a confirmed or suspected ABI or complex needs. This needs-based approach may include assigning specialist case managers with lower case-loads and higher entry and training requirements to such clients, even if they are not in an offence-based high risk category.

RECOMMENDATION 23

Current Justice Health contracts should be reviewed to ensure that prisoners have equal access to a reasonable range of health services comparable to those available in the community, with emphasis on making available treatments and therapies other than medication that are relevant for people with cognitive disability and complex needs, such as occupational therapy and counselling.

RECOMMENDATION 24

That the Victorian Ombudsman conduct an inquiry into the management of prisoners with mental illness and disability in Victorian prisons and youth detention facilities, including a review of whether there is currently an inappropriate use of psychiatric medication and other measures such as seclusion.

RECOMMENDATION 25

That Corrections Victoria introduce a team of ABI Clinicians—through partnership with community based health organisations—to deliver assessment services and support to people in Victorian prisons who have, or are suspected of having an ABI.

RECOMMENDATION 26

That all people with an ABI and/or complex needs qualify for pre-and post-release planning and support, regardless of their risk rating or offending profile and that the current pre-and post-release programs be reviewed to determine their suitability for people with an ABI/complex needs.

RECOMMENDATION 27

People who are in prison should be able to apply for, access and continue to receive their NDIS support package while in prison on an equal basis with people who are not in prison, making use of all registered NDIS service providers that work with people in prison. NDIS applications and package planning should be fully integrated into post release planning and support.

RECOMMENDATION 28

That Corrections Victoria be required to prepare detailed, publicly available reports on key performance measures.

RECOMMENDATION 29

That the Victorian and Commonwealth governments continue to provide, and increase the provision of, easily accessible community support services that seek to enhance social inclusion and provide connection to health and other services for individuals with an ABI and complex needs who do not qualify for NDIS support. This should include funding for the establishment and facilitation of peer support and advocacy networks that promote social inclusion and participation for people with an ABI and complex needs.

RECOMMENDATION 30

That the Victorian government provide funding to both advocacy and legal services to assist people with an ABI and complex needs in contact with the criminal justice system—especially those in prison—to access the NDIS.

RECOMMENDATION 31

Further to Recommendation 26, that Corrections Victoria and the Department of Health and Human Services make available a larger number of properties to community support organisations, accessible to people with an ABI and/or complex needs being released from prison.

RECOMMENDATION 32

That the Victorian Government in partnership with a current community support provider establish a pilot housing support program targeted towards people in contact with the criminal justice system with an ABI or complex needs living in or reintegrating back into the community. The program should:

- have access to specified social housing stock;
- have access to brokerage funding; and
- engage people with lived experience of the criminal justice system and ABI to assist in the design of the program and provide support.

RECOMMENDATION 33

That the Victorian government provide long term and increased funding to homelessness and tenancy support services to provide assistance to people who have exited prison and who reside in public and social housing, to sustain their tenancies and provide support to address underlying issues that may place their tenancies at further risk.

RECOMMENDATION 34

That the Victorian Government work with the Commonwealth Government to utilise all available economic levers to address the housing affordability crisis.

RECOMMENDATION 35

That the Department of Health and Human Services extend the period of absence allowed from a public tenancy from the current maximum of 6 months to a maximum of 12 months, with the ability for discretion to be applied.

SECTION 1

BACKGROUND AND METHODOLOGY

“Any meaningful approach to reform must involve listening to the users of the criminal justice system, particularly those whose voices are rarely heard—offenders, prisoners and victims...”

ENABLING JUSTICE PROJECT PARTNERS

33% of women
and 42% of men
in Victorian prisons
have been found
to have an
Acquired Brain
Injury (ABI),
compared
with 2% in the
general Australian
community

SECTION 1

BACKGROUND TO THIS RESEARCH AND METHODOLOGY

IN VICTORIA'S PRISONS, ALMOST HALF OF MALE PRISONERS AND OVER A THIRD OF FEMALE PRISONERS HAVE AN ACQUIRED BRAIN INJURY (ABI). OUR CRIMINAL JUSTICE SYSTEM, AND PRISONS IN PARTICULAR, HAVE BECOME THE DE FACTO SOCIAL SERVICE FOR PEOPLE WITH AN ABI AND COMPLEX SUPPORT NEEDS. THE DISPROPORTIONATELY HIGH RATE OF INCARCERATION AMONGST PEOPLE WITH AN ABI SEEMS TO INDICATE THAT THE CRIMINAL JUSTICE SYSTEM FAILS TO MEET THE NEEDS OF THIS GROUP. DESPITE THE PREVALENCE OF PEOPLE WITH AN ABI IN THE CRIMINAL JUSTICE SYSTEM,¹ THE INTERVENTIONS TARGETED TOWARDS THIS GROUP ARE LIMITED.

As Barb Teows has argued, the criminal justice system 'shows little respect for people who offend. They are typically seen as wholly unworthy people who deserve little more than blame, pain and punishment.'² While the origins of this thinking are understandable, it limits the possibility of designing a system that will change the trajectories of people who have broken the law by ignoring the capacity of people closest to the problem to develop solutions to reduce offending and its harmful impact on the community.

Like the city built for cars, not people, or the hospital that would function perfectly well if only there were no patients, the criminal justice system has not been designed with the needs of its primary 'users' in mind. Despite their centrality to the criminal justice system, the 'user' experience is not well understood. The system lacks an effective mechanism for learning whether the processes, programs and approaches actually meet the needs of the people to whom they are directed.

The Enabling Justice project partners, the Centre for Innovative Justice and Jesuit Social Services, share the view that any meaningful approach to reform must involve listening to the users of the criminal justice system, particularly those whose voices are rarely heard—offenders, prisoners and victims. Achieving inclusion and participation for those involved in this project was the focus, taking priority over conventional research methods. During the first phase of the project,

¹ There is a significant data gap on the prevalence of people with an ABI involved with the criminal justice system generally, probably largely attributable to the 'hidden' nature of the disability. But the prevalence among incarcerated individuals, established by research commissioned by Corrections Victoria in 2011, combined with limited data available from reports such as VLA's 2016 paper based on de-identified client data, leads us to conclude there is a generally high prevalence across the system.

² Barb Teows, *Little Book of Restorative Justice for People in Prison: Rebuilding the Web of Relationships* (2006), page 17.

participants—people with an ABI and lived experience of the criminal justice system—were invited to share their experiences of the system and to identify ways in which it could be more responsive to their needs during individual semi-structured interviews.¹ Semi-structured interviews were conducted with twenty-one project participants.

This project was guided by the experiences of project participants, most of whom interacted with the criminal justice system as offenders. Most participants, and all members of the Justice User Group, had spent time in prison. While this report reflects the experiences of those ‘users’ of the criminal justice system, it recognises that the system is used by a broader range of people who may interact with it in other ways, including as witnesses and victims. Yet most participants involved in this project also had experiences of the system as victims of crime, both as children and as adults. Among other insights contributed by the experiences of the participants, it became clear that thinking about victims and offenders as two distinct groups is both inaccurate and unhelpful. At times, moreover, maintaining this distinction can undermine the development of effective responses to the challenges faced by both.

To foster active participation in the project by people living with an ABI, interview participants were invited to form a ‘Justice User Group’. Once established, the Justice User Group met on a bimonthly basis to share their experiences with researchers, identify opportunities to design a more responsive system, and develop their capacity to share their experiences with the community through self-advocacy. While group meetings were ongoing, Enabling Justice project staff worked to develop recommendations for systemic change based on the group’s observations and suggestions. Draft recommendations were then presented regularly at group meetings and tested with individual participants and members of the group to determine whether they should be included in the final report or required further development. Project staff were responsible for translating some recommendations in the context of the legal, social and political environment. In this way, project staff—as experts in their practice and policy fields—and the members of the Justice User Group—as experts in their own lived experience—developed responses built on combined expertise and grounded in experience.

Of the twenty-one participants interviewed, nine people (seven men and two women) chose to join the Justice User Group.² All participants experienced a range of complex circumstances (mental illness, homelessness, family violence, substance addiction) in addition to their ABI, which meant that they required intensive support to enable their participation. The stories of participants presented throughout this report repeatedly bring to light the links between multiple disadvantage, ABI and contact with the criminal justice system, confirming what is already known from existing research literature.³ These stories offer not just a profile of those people with an ABI who cycle through our criminal justice system, but detailed examples of the system’s repeated failure to recognise and respond to the needs of people with an ABI.⁴

- 1 Information about the semi-structured interviews, including questions and the participant information and consent form, can be found at appendix 3.
- 2 More detail about the participants and members of the Justice User Group and their participation in the project is provided in the appendices.
- 3 Leanne Dowse, Melissa Clarence, Eileen Baldry, Julian Trofimovs and Sharleen James, ‘People with Mental Health Disorders and Cognitive Disabilities in the Criminal Justice System: the impact of acquired brain injury’, April 2011.
- 4 A more detailed explanation of methodology, interview protocols and questions used is set out in the appendices.

SECTION 1

BENEFITS AND CHALLENGES OF THIS APPROACH TO RESEARCH

A KEY FEATURE OF THE PROJECT’S APPROACH TO UNDERSTANDING THE EXPERIENCES OF PEOPLE WITH AN ABI WAS THE PROVISION OF FLEXIBLE AND PERSON-CENTRED SUPPORT TO PARTICIPANTS.

Establishing the Justice User Group presented a number of challenges. Recruiting participants with an ABI and experience of the criminal justice system required persistence. During the course of the project, many participants experienced transience due to insecure housing, difficulty remembering appointments, continued drug and alcohol use, mental illness and the pull of more immediate needs or concerns. As a result, sustained support was required to enable members of the Justice User Group to participate. Recruiting women to participate in the project was especially difficult, requiring a flexible and responsive approach to support their engagement. This limited the capacity to discuss, at a group level, the gendered experience of family violence and its connection to ABI, despite it being a recurring theme in the experiences of female participants.

Once recruited to the Justice User Group, substantial support was required to ensure participants remained connected to the project. Participants continued to experience a range of personal challenges during the course of the project. Despite this, attendance at Justice User Group meetings and other activities was consistently high. The level of commitment to the Justice User Group by participants can be attributed to a range of factors, including the support provided by Jesuit Social Services, the rare opportunity to contribute to something positive, a lack of other meaningful support available in the community and the connections and friendships made with other participants. In this sense, while the challenges were great, the value in taking this approach was confirmed by the positive engagement and experiences of participants,¹ which could be gleaned from the evaluation interviews conducted with each participant at the end of the project.

“I wanted change not just for myself and for everybody so they’re not put in the same position as me. This place here, is giving me the opportunity to realise what went wrong. And now I want to make things right.”²

While many participants had recent experience of the criminal justice system, none of them were actually serving custodial sentences or

- 1 Evaluation with members of the Justice User Group, 8 December 2006.
- 2 Evaluation interview 1, 8 December 2016.

community corrections orders during the course of the project. This meant that participants were unlikely to have experienced the impact of any policies or approaches implemented over the past 12 months by Victoria Police, the courts or Corrections Victoria. Recent changes in approach are acknowledged in this report, alongside a disclaimer that participants were unable to provide personal experience about their impact, but could offer insights about their anticipated impact.

The landscape to which this report relates is vast. Access to housing was a very significant issue for this group, certainly significant enough to warrant its own separate piece of research. In fact, the Justice User Group saw this issue as so important that they engaged in direct advocacy about this issue through a campaign promoting the need for better post-release housing and support options¹ and were supported through the project to do so. Although the focus of this project has been on the criminal justice system, the project partners acknowledge that access to housing is integral to addressing the needs of the participants. Until governments address the issue effectively, reforms made to the criminal justice system will have a limited impact in reducing the over-representation of people with an ABI.

The growing body of research and activity in the area of crime prevention and justice reinvestment² is also relevant to this project. Addressing the underlying causes of crime early by investing in social supports in communities experiencing high levels of disadvantage and whose residents are over-represented in prison populations are likely to be part of the solution to the challenge of reducing the over-representation of people with an ABI in the criminal justice system. Given what this project has revealed about the backgrounds of project people with an ABI in contact with the criminal justice system, measures which seek to enhance early intervention and support for communities that experience high levels of disadvantage may not only prevent criminal justice system contact but also reduce the prevalence of ABI in those communities.

This project has focused on how the criminal justice system might be improved for people with an ABI. Of course, it is impossible to properly consider how the system's response to people with an ABI might be improved without looking at the support and resources available in the community. This report therefore touches on the role that community support—such as post-release housing and support, the National Disability Insurance Scheme and responses to family violence—can play in preventing people with an ABI from cycling in and out of contact with the criminal justice system.

Finally, where people with lived experience are involved in the process of influencing systemic change, they are not merely subjects but agents. The participation of this group in advocacy and in shaping policy allowed their needs to be identified, but also facilitated a shift in the way they were viewed by others and the way they viewed themselves. This project has demonstrated the multiple benefits of engaging the people who use a system in research and policy development, including the empowerment of people who are commonly disenfranchised.³

- 1 The Three Hats and a Cot campaign was launched on 4 August 2016 by Minister for Housing, Disability and Mental Health, The Hon. Martin Foley and involved the members of the Justice User Group producing artworks which were transformed into campaign postcards and distributed to local businesses, cafés, and public spaces.
- 2 Justice Reinvestment is the diversion or reinvestment of money spent on imprisonment into evidence-based treatment and support programs aimed to reduce recidivism and enhance public safety. A concept developed in the US, but gaining traction in Australia, justice reinvestment measures have demonstrated how they can tackle prison overcrowding, enhance treatment options in the community, reduce recidivism and save money.
- 3 Ida Dupont, *Beyond Doing No Harm: A Call for Participatory Action Research with Marginalized Populations in Criminological Research*, 2008.

SECTION 1

KEY CONCEPTS UNDERPINNING THIS REPORT

RESPECT FOR HUMAN RIGHTS AND ACCESS TO JUSTICE

The Enabling Justice project sought to embody the principle of equal participation enshrined in the United Nations Convention on the Rights of Persons with a Disability (UNCRPD), and that approach is reflected in this report. The UNCRPD provides that people with a disability are entitled to the necessary supports required to enable them to participate in the community to the fullest extent, and must be included in the process of shaping policies and programs that impact their lives.¹ The recommendations advanced in this report arise as a result of a collaborative and participatory process undertaken with people living with an ABI who have lived experience of the criminal justice system, including imprisonment. The report highlights the importance of support for the enjoyment of basic human rights by people with disabilities. Support means a range of practical measures and resources that all people need to some degree in order to live with dignity in the community.²

UNIVERSAL DESIGN

Universal design is another human rights principle arising out of the UNCRPD.³ It means that the built environment, systems, programs and services should be designed so that all people, regardless of capability, background, and age can make use of them, without the need for additional support, expensive add-ons or adjustments. In doing so, systems, programs and services are improved and made more accessible for the benefit for all people. This supports access to justice and equality before the law for people with disabilities, both key human rights guaranteed under the UNCRPD. For example, a service that uses plain language assists people with cognitive impairment, but it also assists people with low levels of literacy or whose first language is not English. Respecting the human rights of people with disabilities in the criminal justice system demands that universal design should be used to promote accessibility, and that people with disabilities must receive the support they require to enjoy the rights of access to justice, equal participation and equality before the law. Many of the recommendations advanced in this report involve promoting universal design and access to justice—through the provision of support—to ensure that people with a disability are able to exercise basic human rights whatever their status in the criminal justice system.

- 1 The Enabling Justice project is underpinned by principles enshrined in the Convention on the Rights of Persons with Disabilities, including that people with disabilities such as ABI have a right to participate in the process of improving the systems that affect their lives.
- 2 For example, a recent report (March 2017) of the Special Rapporteur to the Human Rights Committee defines support and how different people need different types and levels as a result of how the social and built environment are designed. 'Able' people need less because the environment is designed for their needs whereas 'disabled' people need more support to get around, communicate and participate in work and leisure. Human Rights Committee, Report of the Special Rapporteur on the rights of persons with disabilities, UN Doc A/HRC/34/58 (27 February 2017).
- 3 Article 2 and Article 4(f), United Nations Convention on the Rights of Persons with Disabilities.

A HUMAN-CENTRED APPROACH

The Enabling Justice project also sought to put people with experience of the criminal justice system at the centre of the process of developing responses to improve it. This aligns with the human rights principle of equal participation and the recognition that human-centred design can help improve the effectiveness of systems and processes for their users.¹

It has been recognised in other contexts that those closest to the 'problem' are often closest to the solution, but rarely have access to the resources necessary to effect change. Viewing people who have been convicted of criminal offences as having no role to play in the process of developing responses to systemic challenges risks overlooking a valuable resource. Of course, it is reasonable to question whether the criminal justice system can be considered a 'system' at all. Understanding this 'system' from the perspective of those who have travelled through it may therefore provide a far more coherent picture than the fragmented and the narrow view of the institutions that comprise the system. This also underscores the point that understanding the experiences of the people who are the 'users' of the justice system may be the most effective method of developing solutions. It is, after all, these 'users'—rather than the institutions that comprise the system—who are the primary targets for most of the system's interventions. In short, listening to the people at the centre of the system is crucial. Effective responses are unlikely to emerge unless those most affected by the failures of the criminal justice system are engaged in the process of developing solutions.

¹ The approach was influenced by the pragmatic idea of human-centred design: an idea that systems, services, products and environments should be designed with the needs of their users in mind. See Tim Brown and Jocelyn Wyatt, 'Design thinking for social innovation' Winter 2010 Stanford Social Innovation Review, 31-35; DesignKit: the Course for Human-centred Design: An introduction to Human-centred Design, p 10. See also Klees Dorst, Lucy Kaldor, Lucy Klippan, Rodger Watson et al, Designing for the Common Good: A handbook for innovators, designers and other people (BIS Publishers, 2016).

SECTION 1

ABI: WHAT IS IT, WHAT CAUSES IT AND WHAT ARE THE CONSEQUENCES?

AN ABI IS ANY DAMAGE TO THE BRAIN THAT TAKES PLACE AFTER BIRTH THAT RESULTS IN DETERIORATION IN COGNITIVE, PHYSICAL, EMOTIONAL OR INDEPENDENT FUNCTIONING.¹

An ABI can be sustained as a result of a traumatic head injury leading to loss of consciousness caused by, for example, a serious road accident or an assault. It can also be caused by non-traumatic damage, as in the case of stroke, drug overdose, brain infections (meningitis or encephalitis) or brain tumour. While the leading cause of ABI in the general community is stroke, for people in prison, the leading cause of ABI is reported to be prolonged alcohol or drug use.²

An ABI can cause a person to experience a range of cognitive impairments and emotional and socially challenging behaviours, including poor memory and concentration, reduced ability to plan and problem solve, lack of consequential decision making, difficulty absorbing new information, heightened emotions and reduced capacity to regulate these, depression, irritability, impulsivity, disinhibition and aggression.³

The ways in which an ABI impacts upon a person depends on the severity and location of the injury, how it was sustained and the general health of the person before and after the injury. For example, alcohol related brain injury commonly causes frontal lobe damage, which can impact a person's executive functioning capacity. People with frontal lobe damage often have difficulty with tasks involving planning, organizing and initiative, exercising consequential thinking or regulating their emotional response. A person with damage to their frontal lobe may therefore experience difficulty coping with change, remembering appointments or following conversation or direction. They can also become easily disorientated or confused and experience anxiety, depression or irritability. As a result of these symptoms, an ABI can cause a person to experience great challenges on a day to day basis, even when approaching tasks that appear simple.

ABI often does not interfere with a person's intellect or their physical appearance and a person with an ABI could experience the emotional and cognitive changes listed above without his/her brain injury being recognised. Instead of prompting medical investigation, these issues can often be put down to behavioural and personality issues both in childhood and adulthood.⁴ Consequently, ABI is often referred to as a 'hidden' disability. Brain Injury Australia argues that public awareness of ABI is 20-30 years behind other disabilities.⁵

¹ Some disability organisations and advocates, such as Brain Injury Australia, advocate for an expanded definition of ABI that includes foetal alcohol spectrum disorder (FASD), which involves alcohol-related damage to the brain incurred during foetal development.

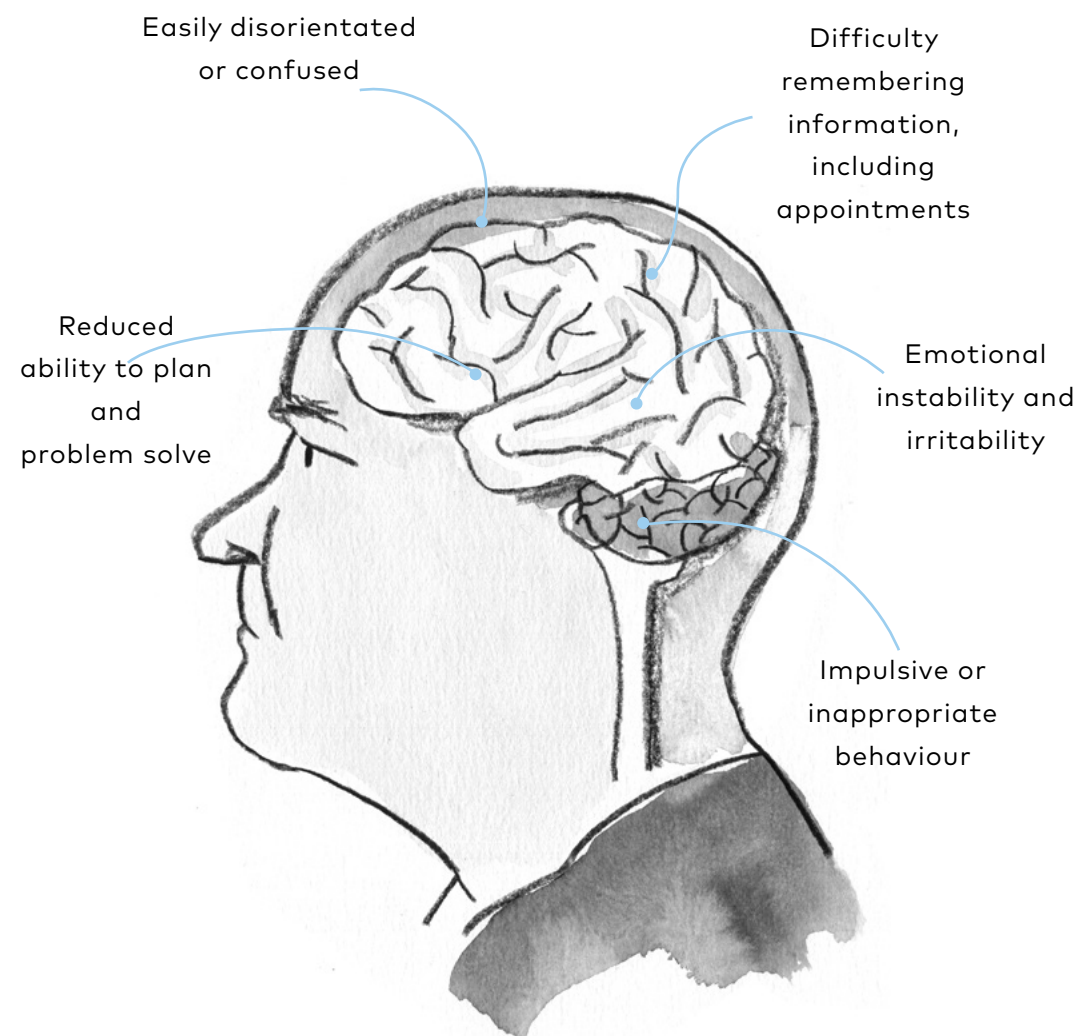
² Martin Jackson, Glen Hardy, Peter Persson and Shasta Holland, 'Acquired Brain Injury in the Victorian Prison System' Corrections Victoria Research Paper Series Paper No. 04 April 2011.

³ Australian Institute of Health and Welfare, 'Disability in Australia: Acquired Brain Injury', Bulletin 55:(2007), 3.

⁴ See Rushworth, N (2010), Policy Paper: Inflicted Traumatic Brain Injury in Children', Sydney, Brain Injury Australia. See also Huw Williams, (2012), Repairing Shattered Lives: Brain injury and its implications for criminal justice. col. ill., port.

⁵ Rushworth, N. (2011). Policy paper: out of sight, out of mind: people with an Acquired Brain Injury and the Criminal Justice System. Sydney: Brain Injury Australia.

THE SYSTEM MUST RECOGNISE THE CHALLENGES EXPERIENCED BY A PERSON WITH AN ABI



NOT JUST ABI: CO-OCCURRING FACTORS

People with an ABI in contact with the criminal justice system — including project participants — commonly experience a range of complex circumstances (mental illness, homelessness, family violence, drug or alcohol addiction) in addition to their ABI. We need a system that listens to the voices of people with an ABI, responds to a person’s (often complex) support needs, has better joined-up approaches between justice and health services and is more respectful.

SECTION 1

WHY ARE PEOPLE WITH AN ABI OVER-REPRESENTED IN THE CRIMINAL JUSTICE SYSTEM?

“It’s just a part of my life now. It’s all I know. I just always get in trouble.”¹

People with an ABI are imprisoned at staggering rates. In 2011, a study commissioned by Corrections Victoria² revealed that 42 per cent of men and 33 per cent of women in a sample Victorian prison population had a diagnosis of ABI. By contrast, in the general Australian community, two per cent of people have an ABI.³ The over-representation of people with an ABI in prison is not a Victorian anomaly: in other states and territories of Australia,⁴ and in other English speaking countries, including the United States, Canada, New Zealand and the UK, people with an ABI are imprisoned at equivalent rates.⁵ Across jurisdictions, people with cognitive impairment are susceptible to imprisonment, suggesting that something is missing in the community and the criminal justice system for this group. Unsurprisingly, people with an ABI are also much more likely to have contact with other parts of the criminal justice system, from police to courts to community corrections.⁶

We know that various factors can provoke the over-representation of a particular group, including those with an ABI, in prison populations.⁷ The group may be more likely to have contact with police; more likely to be arrested and charged if they do have contact; more likely to be refused bail and remanded in custody; more likely to be convicted of a crime; more likely to be sentenced to imprisonment; less likely to be able to comply with a community corrections order. All factors can combine to produce over-representation in prisons, but not enough information exists about the pathway of people with an ABI through the criminal justice system to know which factors are more responsible than others, if any. The information below draws upon other research as well as the experiences of the participants in this project, and the factors present in their lives both prior to and after sustaining an ABI, that provides some explanation as to how people with an ABI are so over-represented in the criminal justice system.

IS IT JUST THE NATURE OF ABI?

Of course, most people with a disability will never break the law, but we need to examine how certain factors associated with an ABI might interact with a person’s environment and personal characteristics to place them at greater risk of behaving in ways that are likely to be both noticed and treated as a crime by others. As already described, an ABI can cause a person to experience a range of cognitive impairments which give rise to emotional and socially challenging behaviours, including poor memory and concentration, reduced ability to plan and

1 Participant interview, dated 20 May 2015
 2 Martin Jackson, Glen Hardy, Peter Persson and Shasta Holland, 'Acquired Brain Injury in the Victorian Prison System' Corrections Victoria Research Paper Series Paper No. 04 April 2011.
 3 Ibid, citing Australian Institute of Health and Welfare, 'Disability in Australia: Acquired Brain Injury', Bulletin 55: (2007), 3.
 4 A UNSW study of 2731 individuals who have been in prison found that 49% had an ABI and 77% had a mental health disorder: Baldry E, Dowse L, Webster I, Australians with Mental Health Disorders and Cognitive Disabilities (MHDCD) in the Criminal Justice System Project, UNSW.
 5 See Shiroma, E. et al. (2010). Prevalence of traumatic brain injury in an offender population: A meta-analysis. Journal of Correctional Health Care, 16, 148, Tracey V. Barnfield and Janet M. Leatham, 'Incidence and outcomes of traumatic brain injury and substance abuse in a New Zealand prison population' (1998) Brain Injury 12(6) 455-466, Peter W. Schofield, Tony G. Butler, Stephanie J. Hollis, Nadine E. Smith, Stephen J. Lee and Wendy M. Kelso, 'Traumatic brain injury among Australian prisoners: Rates, recurrence and sequelae' (2006) Brain Injury 20(5) 499-506. See also Huw Williams, Repairing Shattered Lives: Brain injury and its implications for criminal justice. col. ill., port., 2012, p 18-19.
 6 NSW Law Reform Commission, 'People with cognitive and mental health impairments in the criminal justice system: Diversion', Sydney, 2012.
 7 See Don Weatherburn, Arresting Indigenous Incarceration: pathways out of Indigenous Imprisonment, Aboriginal Studies Press, 2014, 41-42.

problem solve, inflexible thinking, depression, emotional instability, irritability, impulsivity, disinhibition and aggression.¹ Various studies have drawn an association between ABI and offending behaviour,² with some linking the over-representation of people with an ABI in the criminal justice system to the effects of frontal lobe damage.³

The cognitive and behavioural changes that an ABI can cause, such as poor impulse control, aggression and poor social perceptions, can cause a person to display behaviours which fall outside societal norms and increase their risk of contact with the criminal justice system. Nick Rushworth, the Executive Officer of Brain Injury Australia, says that people with an ABI commonly tell him "I have no filter; I have no fuse. I do or say the first thing that comes into my head".⁴ It is easy to imagine how a person who experiences this kind of impairment might make other members of the community uncomfortable, draw the attention of police and end up in contact with the criminal justice system. As one project participant described, their ABI impacted upon their decision-making:

"I made really, really, really poor bad choices, time after time after time and I kept putting myself in positions and situations that were detrimental to myself and I kept creating these problems. I didn't know it then, I know it now."⁵

People with an ABI, by virtue of their disability, are further disadvantaged once in the criminal justice system and often find it difficult to break contact with it. This is because the criminal justice system demands compliance with rules, instructions and processes that people with an ABI can have difficulty following. As one project participant described:

"[I]t's a struggle daily to get through. I've learned to use a diary, for example, because I'll forget what you said to me ten minutes ago. So, getting through your day and getting to your commitments is real hard, you know?"⁶

People with an ABI often have multiple disabilities as well as a range of other factors that give rise to complex support needs. While it is true that most people in contact with the criminal justice system have "mild" ABI,⁷ it does not necessarily follow that the support needs of those people are insignificant. What it does mean is that people with mild ABI are most at risk of their ABI being obscured and, hence, overlooked.⁸ This is a problem, especially when project participants described facing sanctions or negative consequences as a result of behaviours associated with an ABI, such as failing to remember appointments or to take medication, being mistaken for intentional non-compliance or trouble-making.

- 1 Australian Institute of Health and Welfare, 'Disability in Australia: Acquired Brain Injury', Bulletin 55:(2007), 3.
- 2 For example, Michael Parsonage, Centre for Mental Health, 'Traumatic Brain Injury and Offending: an economic analysis', 2016, p 5; Fazel, S., Lichenstein et al (2011) Risk of violent crime in individuals with epilepsy and traumatic brain injury: a 35 year Swedish population study. PLOS Medicine, December 2011, 8 (12), e1001150.
- 3 Turkstra, et al, 'Brain injury and violent crime', Brain Inj. 2003 Jan, 17(1): 39.
- 4 Rushworth, N. speaking at 'The Power of Reform: Imprisonment & Mental Health in Victoria' at The Wheeler Centre, 23 February 2017, presented by Monash University and the Prison Observatory.
- 5 Participant interview dated 27 April 2016.
- 6 Participant interview dated 22 May 2015.
- 7 Baldry E, Dowse L, Webster I, Australians with Mental Health Disorders and Cognitive Disabilities in the Criminal Justice System Project. See also Jackson, M., Hardy, G. Acquired Brain Injury. Screening, Identification and Validation in the Victorian Correctional System, Arbias and Latrobe University, (2010).
- 8 Rushworth, N. 'Policy paper: Out of sight, out of mind: People with acquired brain injury and the criminal justice system' July 2011.

To presume that a person engages in criminal offending because of their ABI fails to acknowledge the complexity of the circumstances of people with an ABI who offend. As we describe below, ABI is often inextricably linked to a person's set of social and economic circumstances, which is the greatest determinant of whether a person will have contact with the criminal justice system.

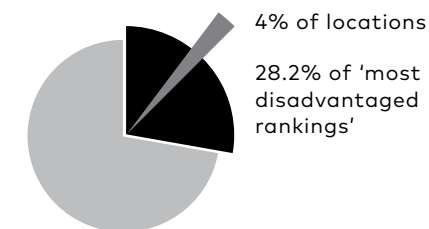
IS DISADVANTAGE THE CAUSE?

Complex needs are an integral part of explaining the over-representation of people with an ABI in our prisons, demonstrating that viewing the problem as one of disability alone will fail to capture the extent of the issues. Studies have consistently warned of the need to contextualise the over-representation of people with an ABI in the criminal justice system against other common underlying risk factors in a person's life.¹

In 2015, Jesuit Social Services along with Catholic Social Services Australia released the findings of its fourth Dropping off the Edge 2015 Report (DOTE),² which found that complex and entrenched disadvantage continues to be experienced by a small but persistent number of locations in each state and territory across Australia, including in Victoria. Just 27 postcodes (4 percent of total in Australia) account for 28.2 percent of the highest rank positions across 22 indicators of disadvantage (see diagram below).

Of particular concern is the concentration and web-like structure of disadvantage within a small number of communities across the state. This research found that those living in the 3 per cent most disadvantaged postcodes in Victoria are:

- twice as likely to have criminal convictions
- 3 times more likely to be experiencing long term unemployment
- 2.6 times more likely to have experienced domestic violence
- 2.4 times more likely to be on disability support.



The risk factors for a person sustaining an ABI overlap significantly with the risk factors for a person to be imprisoned: experiencing poverty, low levels of education, unemployment, drug or alcohol misuse, childhood trauma, homelessness, prior experience of domestic violence or poor mental and physical health. ABI is far more prevalent in people who experience these factors than in the general population.³ In this way, ABI 'tracks socio-locational disadvantage'.⁴ This claim is borne out by a recent study involving over 33,000 working age Australians which identified that, compared to peers who experience different types of disability, people with a cognitive impairment like ABI experience the highest rates of socio-economic disadvantage in the areas of

- 1 Dowse, Clarence, Baldry, Trofimovs and James, 'People with Mental Health Disorders and Cognitive Disabilities in the Criminal Justice System', 2011.
- 2 Vinson, T and Rawsthorne, M 2015, Dropping off the Edge 2015, Jesuit Social Services and Catholic Social Services Australia.
- 3 Michael Parsonage, Centre for Mental Health, 'Traumatic Brain Injury and Offending: an economic analysis', 2016, p 5.
- 4 Nick Rushworth, 'Policy paper: Out of sight, out of mind: People with acquired brain injury and the criminal justice system' July 2011.

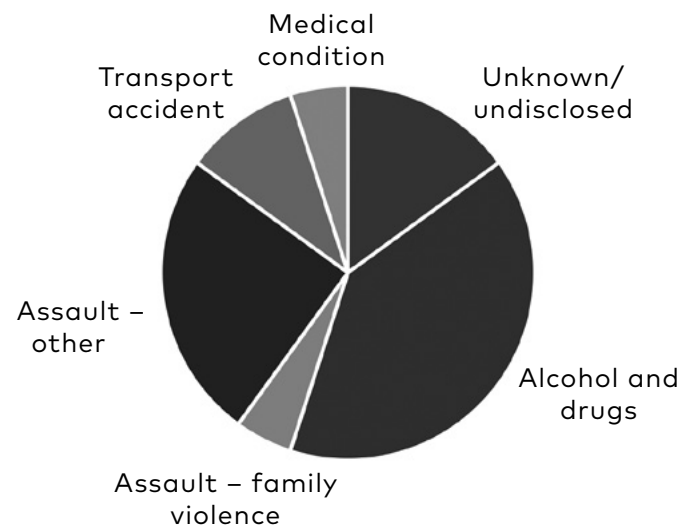
education, housing and employment and accessing support services in the community.¹ It is also borne out in the experiences of project participants, whose histories have been marked by trauma, childhood abuse, neglect, family violence, early exposure to drugs, parental imprisonment and low levels of education.

Every participant in this project identified a co-occurring (and often more than one) disability or hardship. For some, their ABI was one element among many that made navigating life, both within and outside of the criminal justice system, challenging. These elements (which are risk factors for sustaining an ABI) included:

- Early experience of head trauma from family violence;
- Neglect, abuse and experience of out of home care;
- Leaving education early;
- Risk taking behaviour early in life including driving related offending, being involved in fights, associating with peer groups who break the law, or using alcohol and/or other drugs;
- Early and sustained misuse of alcohol and/or other drugs;
- Homelessness from an early age and being exposed to violence on the street;
- Early contact with the criminal justice system;
- Experiencing violence at the hands of police or from prison guards or other prisoners while in prison;
- Exposure to violence in intimate relationships.

The ways in which participants sustained an ABI (shown in Figure 1.2, below) highlight the kinds of challenges and risks that were already present in their lives pre-ABI, and how disadvantage is linked to their disability and their criminal justice system contact.

Figure 1.2: The link between exposure to ABI risk factors and sustaining an ABI is reflected in the chart above showing the suspected or known cause of ABI across the participant group.



1 Anne M. Kavanagh, Lauren Krnjacki, Zoe Aitken, Anthony D. LaMontagne, Andrew Beer, Emma Baker and Rebecca Bentley 'Intersections between disability, type of impairment, gender and socio-economic disadvantage in a nationally representative sample of 33,101 working-aged Australians', *Disability and Health Journal* 8 (2015) 191-199. See also Australian Institute of Health and Welfare, 'Disability in Australia: Acquired Brain Injury', *Bulletin* 55: (2007), 1, regarding high incidence of 'complex disability' among persons with an ABI. See also Leanne Dowse, Melissa Clarence, Eileen Baldry, Julian Trofimovs and Sharleen James, 'People with Mental Health Disorders and Cognitive Disabilities in the Criminal Justice System: the impact of acquired brain injury', April 2011.

“I came from a family of violence and drugs and alcohol and it turns out my ex-husband and every partner I chose were violent men.”¹

Experiences of family violence, physical and sexual abuse, neglect and time in out of home care as children were common in the early lives of participants. Many participants identified their subsequent substance use and risk taking behaviour as a response to the trauma that they had experienced while very young that followed them into adulthood.

While both men and women had experienced family violence² at an early age, once adults, the gendered nature of family violence was reflected through the experiences of the Justice User Group, whereby most women became victims of intimate partner violence and most men became perpetrators.

Almost every project participant described having some, and in most cases, frequent contact with the criminal justice system as a child, some from a very young age. A large proportion of participants observed parents and other family members move in and out of contact with the system, and many participants described criminal activity and contact with the criminal justice system as a normal part of growing up in their neighbourhood.

“Drugs have been a bad thing for me all my life. Since I was 12, I’ve been using, something. Whether it be marijuana or ice or speed or something. Like, I never touched heroin until later on in my life and I ended up... every time I had it I overdosed.”³

Once in their early teens, many participants had dropped out of school and, for some, this marked the entry point to the criminal justice system, including incarceration. For many participants, drug and alcohol misuse began early, and followed them into adulthood.

That Aboriginal people are over-represented in prison is well established⁴ and a large proportion of Aboriginal people in prison have been found to experience mental illness and cognitive impairment.⁵ Aboriginal people also experience the risk factors for sustaining an ABI, including homelessness, poverty, early childhood trauma, at much higher rates than the rest of the Australian population,⁶ explaining why Aboriginal people experience ABI at higher rates than non-Aboriginal people.

Aboriginal participants spoke of the ongoing impacts of intergenerational trauma on their lives and how this trauma related to behaviours (in themselves and others) that put them at greater risk of sustaining an ABI. All three Aboriginal members of the Justice User Group had spent time in out of home care from a young age; two identified themselves and their parents as part of the Stolen Generation. All three Aboriginal participants in the Justice User Group had also spent time in juvenile detention as children. Aboriginal participants felt that their aboriginality brought them under the gaze

1 Participant interview dated 27 April 2016.
 2 Royal Commission into Family Violence, Volume 1, Report and Recommendations, p 17; Department of Human Services, 'Family Violence Risk Assessment and Risk Management: Framework and Practice Guides 1-3 (Edition 2)' (April 2012) 46-7.
 3 Participant interview dated 19 May 2015.
 4 Australian Bureau of Statistics, 2016, Prisoners in Australia.
 5 Baldry, E., McCausland, R., Dowse, L. and McEntyre, E. 2015 A predictable and preventable path: Aboriginal people with mental and cognitive disabilities in the criminal justice system. UNSW, Sydney. The issue has recently gained political and public attention, such that in December 2016, Attorney General George Brandis announced that an inquiry into the incarceration rate of Indigenous Australians would be conducted in 2017 by the Australian Law Reform Commission: Also see Professor James R.P. Ogloff, Dr. Jenny Patterson, Dr Margaret Cutajar, Dr Karen Adams, Professor Stuart Thomas and Mr Chris Halacas 2013, 'Koori Prisoner Mental Health and Cognitive Function Study: Final Report', Prepared for the Department of Justice, Victoria
 6 Baldry, E., McCausland, R., Dowse, L. and McEntyre, E. 2015 A predictable and preventable path: Aboriginal people with mental and cognitive disabilities in the criminal justice system. UNSW, Sydney.

of police and, as a consequence, their contact with the criminal justice system was more frequent than it should have been.

The early experiences of the participants and the lives they have gone on to live validate the things that research tells us about trauma; how it impacts a child in a major and lasting way, how it impacts a person's capacity to form positive relationships and make decisions, and shapes the adult he or she becomes.¹

This evidence, from a range of sources, suggests that any meaningful investigation into the over-representation of people with an ABI in prisons will acknowledge the intersections of disability, disadvantage, poverty and discrimination. People with co-occurring socio-economic disadvantage and mental illness and/or cognitive disability face significant barriers to accessing adequate and appropriate services in the community.² For a person who is already at risk of involvement in the criminal justice system, an ABI compounds and multiplies the risk factors identified above. It can be both a consequence and a contributing cause of homelessness, family breakdown, family violence, unemployment, social exclusion, the development of a psychotic illness or depression and elevated misuse of alcohol and/or other drugs. This is due to a combination of the direct organic consequences of injury to the brain in terms of behaviour and personality change, but often also to the trauma by which an injury is acquired, and the related impact the injury can have upon psychological wellbeing, social relationships and status.³

It is clear that preventing ABI and preventing imprisonment cannot be achieved without addressing disadvantage. If we are to disrupt the trajectories that young people who, by virtue of their life experiences and multiple disadvantage, are travelling along, then we must develop alternatives. The challenge for policy makers is knowing when and how to intervene and where to find the resources. What we do know is that there are some simple measures that can be adopted which can have an impact on a person's experience and these are identified later in this report. While this report recognises the need to invest in early intervention measures including through the strategy of justice reinvestment, it is not within its scope to address these matters in detail.⁴

The focus of this project was to put the criminal justice system under the spotlight and to understand how it is experienced by people with an ABI. However, the interrelatedness of ABI and other common underlying determinants of offending must be understood if we are to design a system that is both fair and rehabilitative for all people, including those with a disability or complex needs.

1 For example, the 2009 NSW Young People in Custody Health Survey, found that 81 percent of female and 57 percent of male young people in juvenile detention in NSW reported being having been abused or neglected. See Indig, D., Vecchiato, C., Haysom, L., Beilby, R., Carter, J., Champion, U., Gaskin, C., Heller, E., Kumar, S., Mamone, N., Muir, P., van den Dolder, P. & Whitton, G. (2011) 2009 NSW Young People in Custody Health Survey: Full Report. Justice Health and Juvenile Justice. Sydney.

2 Leanne Dowse, Melissa Clarence, Eileen Baldry, Julian Trofimovs and Sharleen James, 'People with Mental Health Disorders and Cognitive Disabilities in the Criminal Justice System: the impact of acquired brain injury', April 2011.

3 Sue Brown and Glen Kelly, 'Issues and Inequities facing people with an acquired brain injury in the criminal justice system', September 2012. Report prepared by Diverge Consulting for the Victorian Coalition of ABI Service Providers, 34.

4 See Australian Senate, Legal and Constitutional Affairs References Committee, Value of a Justice Reinvestment Approach to Criminal Justice in Australia, June 2013. See also Tony Vinson, Margot Rawsthorne, Adrian Beavis and Matthew Ericson, Dropping off the Edge 2015: persistent communal disadvantage in Australia, Jesuit Social Services and Catholic Social Services Australia, 2015. See also Melanie Schwartz and Chris Cunneen, Redressing Over-incarceration, Addressing Human Rights: what can justice reinvestment do in Australia? 16 September 2014, Right Now.

IS THE WAY THE CRIMINAL JUSTICE SYSTEM OPERATES TO BLAME?

“You’re set up to fail, really. I can understand how a lot of people don’t make it. They fail it. They end up breaking their ICO¹ or whatever it is and back inside they go. You’ve got to have more support services for them when they get out of jail...and housing is a big problem.”²

An ABI can lead to changes in a person's behaviour and psychological state that can be one factor making them more likely to behave in ways that lead to contact with the criminal justice system, although most people with an ABI will never commit criminal offences. Broader social and economic factors, like what sort of support a person has access to, or whether they are dealing with the impact of trauma and neglect, can interact with the effects of a person's ABI to produce a range of outcomes, including that their behaviour may be more likely to be noticed and addressed with a criminal response by others. But we believe these two sets of variables don't tell the whole story, and the very high recidivism rates³ produced by our criminal justice system suggest that the system itself plays a part in the over-representation of people with an ABI in our prisons.

The Enabling Justice project recognises that the criminal justice system's response to people with an ABI—along a continuum that begins with interactions with police and continues post-release—is likely to contribute to future outcomes. Whether that person continues to get into trouble and is imprisoned repeatedly, or instead manages to find and access the support they need to take a different route has much to do with the system's response. Throughout this report, we examine these responses by exploring participants' experiences of the system.

1 ICO stands for Intensive Corrections Order, which was a sentencing provision in the Sentencing Act 1991 (Vic) that was repealed by the Sentencing Amendment (Community Correction Reform) Act 2011 (Vic), which came into effect on 1 January 2012. The ICO was considered a 'sentence of imprisonment in the community' as it was more stringent than the existing comparable Community Corrections Order (CCO) but generally it resembles a CCO in its main features of the offender being ordered to engage with treatment in the community and undertake unpaid community work.

2 Participant interview dated 9 May 2016.

3 Victorian Government, 2017-18 Budget Paper No 3 Service Delivery.

SECTION 2

THE JUSTICE USER EXPERIENCE

“[T]hat the law was telling me ‘these are your choices, pick one’. I didn’t know, I didn’t think I had any other choices.”

CLAUDIA (JAILED FOR 5 YEARS)

“Understanding what it is like to experience the criminal justice system when you have ABI is difficult, unless you have lived experience of it.”

“Poppy”, “John”, “Russell”, “Andy” and “Claudia” are not the real names of the project participants. The names of project participants have been changed to protect their identities.

SECTION 2

INTRODUCTION

IT IS DIFFICULT TO UNDERSTAND WHAT IT IS LIKE TO EXPERIENCE THE CRIMINAL JUSTICE SYSTEM WHEN YOU HAVE AN ABI UNLESS YOU HAVE LIVED EXPERIENCE. THIS PART OF THE REPORT ALLOWS THOSE WITHOUT LIVED EXPERIENCE OF ABI AND THE CRIMINAL JUSTICE SYSTEM TO VIEW IT FROM THE PERSPECTIVE OF THOSE WHO DO.

In order to identify what needs to change, the report draws on the project participants' insights about what they felt they needed when they were interacting with the system, and what they thought should have been done differently. This Section of the report begins by outlining the representative journeys of two Enabling Justice project participants through the criminal justice system. This Section of the report then explores the experiences of project participants and identifies common themes. These themes were identified by analysing the transcripts of interviews with project participants and Justice User Group meetings. The thematic analysis was then validated with the Justice User Group. Drawn together from interviews with project participants and meetings with the project's Justice User Group, the experiences are grouped according to five broad themes which describe how participants felt during their contact with the criminal justice system.

Participants told us that when they had contact with the criminal justice system, they felt:

- Unrecognised, overlooked, dismissed and ignored
- Fearful, frightened and anxious
- Disrespected
- Confused
- Unsupported

When explaining what it was about these experiences that had a negative effect, and what would have made for a more positive experience, participants described a system which did not meet their needs for:

- Recognition;
- Respect; and
- Support.

This approach leads to another insight. Viewing the system from the perspective of people who use the justice system makes it clear that these experiences—and the needs to which they relate—rarely change. While they may manifest in different ways when the context changes, these needs are carried by people throughout their journeys through the criminal justice system.

SECTION 2

WHO ARE THE JUSTICE USERS?

MEMBER #1:

Is in the 45-55 age bracket. He has a history of violence and substance use, which are the causes of his ABI. He experienced significant loss at an early age, as well as family violence and alcohol abuse.

MEMBER #2:

Is in the 45-50 age range, and has spent most of his adult life in prison. He has an ABI as a result of a car accident. He also has a long history of violence and substance use. He grew up in a home where family violence and alcohol abuse were a common occurrence.

MEMBER #3:

Is a man in the 35-40 year old age bracket and has an ABI as a result of drug use and overdose. As a child he lost significant care givers in a car accident, and received no support for this loss. He has spent several years in custody.

MEMBER #4:

Is in the 55-65 year age bracket who has removed from his mother at the age of three weeks. He spent long periods of his life in boys' homes and progressed to prison at the age of 16 for property offences.

MEMBER #5:

Is a 40-45 year old man who as a child spent time in both the child protection and youth justice systems. He carries lot of trauma as a result of experiences in his early life. His offences are predominantly drug related.

MEMBER #6:

Is a 40-45 year old man who was removed from his family as a child. He has an ABI as a result of violence and substance abuse, and is closely tied to his culture and community.

MEMBER #7:

Is a 40-45 year old woman who has experienced significant family violence. She has an ABI as a result of this violence and is passionate about the need for systemic improvements for women who are victims of family and gender violence.

MEMBER #8:

Is a 40-45 year old woman with an ABI as a result of alcohol abuse. She has only learnt of her ABI in recent years and is keen to understand more about how it impacts on her, and how she can learn to manage it.

MEMBER #9:

Is a 45-50 year old man with a long history of drug use. His ABI is a result of his drug use and motor vehicle accidents. He has spent time incarcerated in Victoria and interstate.

SECTION 2

JOURNEYS THROUGH THE CRIMINAL JUSTICE SYSTEM

Claudia and Andy are both participants in the Enabling Justice project. While their names have been changed, both Claudia and Andy decided to have their full stories reproduced in detail for this report. For Claudia and Andy, telling their whole story was a way to show that the system needs to change, and to highlight how small changes could have made a big difference to each of them.

The journeys of both a male and female participant with an ABI have been presented because, while there were similarities between the experiences of men and women who participated in this project, there were also many differences. The repeated instances of family violence and the role of family violence as the actual cause of ABI is notable in Claudia's story.

CLAUDIA

WHAT CHANCE WAS THERE THAT I WOULD HAVE ANY OTHER LIFE?

EARLY CHILDHOOD

From birth, violence was Claudia's idea of normality. She frequently witnessed her father and, later, brothers assaulting her mother. Drugs and alcohol were often used in the home; the police attended her home frequently, but the way she witnessed the police treat members of her family made her believe that they were not there for her protection.

MISSED INTERVENTIONS: by police, child protection, family violence services to protect Claudia.

ANDY

I'VE BEEN BANGED ON THE HEAD TOO MANY TIMES. I'VE HAD A PRETTY HARD KNOCK LIFE. DRUGS, ALCOHOL ABUSE TOO.

EARLY CHILDHOOD

When Andy was about five years old, he was removed from the care of his Aboriginal mother and placed into a foster home, with a non-Aboriginal family, becoming the third generation of his family (after his mother and grandmother) to be removed from their parents and culture. During this time, Andy was physically and sexually abused. He began to experience mental illness (depression, anxiety and schizophrenia) and was suicidal.

EARLY TEENAGE YEARS

After years of witnessing her mother being assaulted, in her early teenage years, Claudia became the target of violence and sexual assault from her older brother. Claudia says it is hard to pinpoint when she sustained her ABI because it was possibly the result of cumulative damage from the assaults she experienced. She suspects that she had a brain injury by the time she was in her mid to late teens because

“[M]y older brother’s drinking and drug taking escalated then and I was his target. The violence got really bad.”

No one intervened to protect Claudia. Her family moved constantly, flying under the radar of child protection and the ordinary safety nets of school and friends.

Missed interventions: by police, who focused on the crimes of her brother, not Claudia’s safety; by school, doctors, to notice Claudia’s violent home life and her ABI.

LATER TEENAGE YEARS

Claudia began using drugs and alcohol and was first arrested by the police when she was only 17.

“My mum wasn’t contacted, I was alone, it was male officers and it was a really, really frightening situation. I didn’t even know if I was going to get out of the police station, let alone what was going to happen to me.”

She recalls an occasion when she was arrested for being drunk in a public place.

“I was dragged in there and there were seven police officers at the desk, one sergeant, and they were all jeering at me, making fun of me and the men that were in the cells were going bananas, because I was the only female and they were saying things like “If you don’t do what you’re told, we’re going to stick you with the men, see how you like that.”

EARLY CHILDHOOD

Missed interventions: to keep Andy connected with his family and culture; to keep him safe from physical and sexual violence.

TEENAGE YEARS

Andy ran away from his foster home and was reconnected with his mother when he was in his early teenage years. He dropped out of school in year eight and moved to regional Victoria to live with extended family and work. During this time, Andy says he learned to drink and smoke. Andy already had a poor view of police and the criminal justice system as a result of other family members’ experiences and the death of his grandfather in custody when he was a young boy, but it was from this time that Andy began to develop his own negative experiences with police. Andy was first arrested by police when he was 14 years old. He says that police assaulted him while they were arresting him and he was offered no support person and recalls being “terrified”. From then on, Andy says:

“Most of my contact with police has been very bad. They’ve ended up jumping all over me and bashing me up.”

Andy said that he felt from a young age that the fact that he was Aboriginal made him a target for police. He tried to cover up his Aboriginality (believing that this would reduce the extent to which he was targeted by police), but he felt that by that stage, he had been marked by police as a ‘troublemaker’. He says that his relationship with police deteriorated as a result of the disrespectful treatment he experienced:

“Every time I have contact with police I either get locked up or they’re doing something stupid... squirting you with a hose through the bars or stuff like spit in your food.”

Andy’s increasing drug and alcohol use in his mid-teens led to an increase and escalation in his offending. He suspects that by this point in his life, he already had an ABI and was

As a result of her experiences, Claudia had little trust in the police and the criminal justice system.

Missed interventions: Police, to identify the violence at her home, her ABI, to treat Claudia respectfully, refer her to community services.

EARLY ADULTHOOD

Unfortunately, Claudia would again come to need the protection of police and the criminal justice system, when she experienced violence at the hands of her partners. Claudia never felt confident that she could escape the violence.

“I tried everything I could to change but I couldn’t. I didn’t understand why I kept making the wrong choices. And I hated myself for that.”

Claudia suspects her ABI worsened as a result of the violence she experienced. When Claudia called the police during or after her partner’s violence towards her, police were only concerned with finding her partner in order to pursue him for other criminal charges. She continued drinking heavily and came to be charged with, and convicted of, criminal offences. Claudia did not receive custodial sentences, instead serving Community Corrections Orders.

Claudia said that none of her community corrections officers identified her ABI nor that she was a victim of family violence and the pattern of behavior continued.

Missed interventions: by Police, Court and Community Correctional Services to treat Claudia respectfully, to refer her to community family violence services, to issue family violence safety notices, to identify her ABI.

MID ADULTHOOD

While Claudia was in “safe” accommodation escaping violence from her partner, she was sexually assaulted. During the sexual assault, Claudia, in her own words:

“just snapped, I lost it.”

Claudia physically assaulted the perpetrator

certainly experiencing mental illness. Andy recalls the first time that he went to Court as being a frightening experience.

“There’s a lot of anxiety, you don’t know what’s going on...”

Missed interventions: to keep Andy engaged with school, to connect Andy with mental health and disability support; to divert Andy from unnecessary contact with police and for Andy to have access to an advocate to mediate and monitor his interactions with police when he was arrested; to provide Andy assistance to understand the criminal justice system, to divert Andy away from the criminal justice system and towards therapeutic options.

EARLY ADULTHOOD

Despite frequent contact with the criminal justice system, Andy managed to stay out of prison until his mid-twenties. Andy wanted any interactions with the criminal justice system (especially the police) to be over as soon as possible and he would sometimes plead guilty to things he hadn’t done to achieve this.

“I couldn’t remember if it was me or not, I just said I did it. Later, I would see the evidence and know that it couldn’t have been me.”

Remembering bail conditions was difficult for Andy and he would often breach them. As a result, he would be denied bail. Andy felt that being presented to a court when he hadn’t been given bail increased his chances of being given a custodial sentence, saying

“If the coppers have got you locked up and they’re presenting you to court like that, you’re thinking nothing’s going to go your way is it?”

When Andy was in his mid-twenties, he was sent to Pentridge prison. He was grateful that he was assessed as being able to work, which he says helped to pass the time and didn’t bring any unwanted attention to his disability and mental illness. In prison, Andy felt that he was unable to access adequate medical treatment and support for his mental illness and ABI. He felt that doctors in prison were over reliant

and as a result of the physical assault, Claudia was arrested and charged.

Although Claudia raised the sexual assault with the investigating police, this did not seem to her to have any impact on the course of the investigation or to be factored into the legal advice she received to plead guilty. Claudia pleaded guilty to the charges. She recalls meeting her barrister on the day of her plea hearing.

“I’m sitting up the back of this court room and this man strode over to me and said his name and said you’re going to prison, we just have to work out how long. That’s how I met my barrister. So there actually wasn’t the opportunity to say, hang on a minute, this, this and this. I was still drinking and taking drugs. I was suicidal and I was homeless. I was in no fit mental state for anything.”

Claudia didn’t understand what was happening, couldn’t speak up for herself and she never felt like the circumstances of her offending were explained to the judge. She said that the barrister never asked how she came to be in the motel room, let alone any questions that might suggest she had an ABI. Claudia felt powerless,

“[T]hat the law was telling me ‘these are your choices, pick one’...I didn’t think I had any other choices.”

Claudia was sentenced to five years in prison.

Missed interventions: by Police to identify ABI, to follow up the alleged sexual assault, to refer her to any support; by lawyers to identify her ABI, raise a defence to the charges on the basis of sexual assault, or raise the circumstances surrounding the assault in mitigation; the Court to identify her ABI; by family violence services to identify her ABI.

Once in prison, Claudia desperately wanted to use the opportunity to get help. She says she asked the prison officers, almost every day, what programs were available to her but she felt that the prison officers did not have the

on anti-psychotic medication rather than the provision of meaningful support.

“I think they tend to stuff them full of drugs. And then they’re like zombies, they’re getting no treatment, just sitting there like nothing instead of tackling their problems... so when you wake up in the morning after the pill they give you, the problem’s still there. There’s no resolve. There’s no result.”

Andy described receiving little to no support while he was in prison to connect him with housing and supports in the community. When he was released from prison, he was always homeless, explaining:

“You’ve gotta sleep in empty houses (squat) unless there’s enough room at your family’s places but it’s usually full of kids... housing is the really bad one, too hard.”

Andy found completing parole conditions close to impossible. He felt that community corrections officers were not understanding of his disabilities, experiences or cultural needs.

“You gotta be good as gold. You can’t muck up once. It’s stressful and strenuous. It was really hard. You’re set up to fail, really.”

Missed interventions: to recognize Andy’s disability and mental illness and provide appropriate communication and support to assist him through the criminal justice system and in the community; to offer Andy treatment for his health issues, particularly those relevant to the risk of re-offending, such as substance dependence, while he was in custody; to provide secure housing and/or transitional support upon release from prison.

right skills or attitude to be working with people like her in this environment. While she was in prison, Claudia did not know that she had an ABI but she knew that something “was not right”. While she raised this with doctors in prison, the matter was never investigated. Only after prison was she eventually received a diagnosis of ABI.

As a woman, Claudia qualified for 12 weeks of transitional support,¹ which included limited case management and referrals to services in the community. She was seeking housing, mentoring, skills training and employment opportunities and assistance with her alcohol addiction, yet felt the support offered addressed none of these needs.

I believed people would help me. I haunted my case worker for programs, anything, because I’d been led to believe there were services on offer for people coming out of prison, but my experience was different.

Likewise, Claudia felt that interactions with her parole officers were wasted opportunities, lasting two minutes and going something like this:

“Still living in the same place?”

“Yes.”

“Use any drugs or alcohol this week?”

“No.”

“Good, we’ll see you next week.”

Claudia said that despite being homeless and having significant support needs, her parole officers gave her no assistance with housing or referrals to other agencies. Claudia eventually found transitional housing, but only through her own enquiries and persistence. She remains living in the community with no formal support.

Missed interventions: By the community support worker to identify her ABI and arrange appropriate housing and support; by parole officer to identify ABI and assist Claudia to find housing, support and even employment.

LATER ADULTHOOD

“They say once you’ve been to jail, you’ll go again.”

A few years after his release from prison, Andy was sent to prison again, for eighteen months for an assault conviction. By this time, Andy says his mental health had deteriorated, but he was unable to access the support he needed in prison. Again, he felt that the approach in prison of prescribing antipsychotic medication rather than any therapeutic programs meant that when he was released from prison, he was in poorer mental health than when he entered. Andy spent the next few years in and out of contact with mental health facilities, usually through involuntary admission. Andy experienced difficulty accessing appropriate services in the community, and said that it was only through his contact with the Victorian Aboriginal Health Service, that his psychiatric condition was diagnosed and treated, his ABI identified and therapeutic measures, such as rehabilitation and counselling, put in place to address his early trauma.

“Those doctors have turned my life around. They had to coach me, spend time having in depth conversations. It was really hard. I had to change my circle of friends and disconnect from some family... I started going to school, that really helped to work my brain.”

Andy feels that as he ages, his ABI is worsening. Memory issues make life very difficult. He enrolled in a university course, but hasn’t been able to complete it. Andy wants to remain drug free and is focused on getting better so he can have contact with his son.

Missed interventions: to diagnose Andy’s ABI and offer appropriate supports and interventions while in custody; to connect Andy to appropriate supports in the community upon release, including ABI specific rehabilitation services.

¹ Under current Corrections Victoria Reintegration Pathway (2015), those who qualify for the Reconnect program (which involves 12 weeks of transitional support delivered by a community service provider) are high risk male offenders, all women prisoners and all Aboriginal and Torres Strait Islander prisoners.

SECTION 2

HOW PEOPLE WITH AN ABI EXPERIENCE THE CRIMINAL JUSTICE SYSTEM

CLAUDIA AND ANDY'S STORIES SHOW THAT THEIR JOURNEYS THROUGH THE CRIMINAL JUSTICE SYSTEM PRESENTED MANY MISSED OPPORTUNITIES FOR INTERVENTION. HAD THESE MISSED OPPORTUNITIES BEEN TAKEN, THEIR TRAJECTORIES MAY HAVE CHANGED. IMPRISONMENT MAY NOT HAVE BEEN INEVITABLE FOR CLAUDIA AND ANDY.

Claudia and Andy's stories also show the interplay of intergenerational trauma, poverty, homelessness, disability and negative experiences with the criminal justice system. Claudia and Andy's negative experiences of the criminal justice system were shared by the other project participants and reflected common themes.

UNRECOGNISED, OVERLOOKED, DISMISSED AND IGNORED

The experiences of project participants suggest that an ABI is rarely identified and frequently overlooked. The hidden nature of ABI—particularly in the criminal justice environment where there is a perceived risk of exposing vulnerability—together with the reluctance of people to ask for help, means that those who work within the criminal justice system must be alert to the risk factors and behaviours associated with an ABI if it is to be identified and the person supported.

Participants felt that the criminal justice system—particularly prisons and community corrections—was not set up to identify or accommodate their needs, meaning that they stumbled along in the 'mainstream' without additional support or services in recognition of their disability.

“I had to really try and remember all the time to go up for meds. They'd say 'Right, you gotta go up for meds between quarter to 1 and 1 o'clock' well all of a sudden you wouldn't remember and you'd be just down walking around. Next minute you're meant to be at the meds and next minute, they won't let you up there, and if you don't have your meds, you go a bit crazier.”¹

This lack of identification meant that behaviours that were a consequence of their ABI, were (often incorrectly) perceived as

¹ Participant Interview dated 14 July 2015.

trouble-making or acting out and often attracted disciplinary measures. Commonly, behaviours such as forgetting information were misconstrued as evidence of something else, for example symptoms of drug use, even in circumstances where the person was not a drug user. Therefore, the programs and supports offered were felt to be futile, and the help that was really needed was not available.

“I was in a way happy about going to jail because I was thinking - sweet I can get help out of this. Well, no, it didn't work like that at all! First day I went there, the day I got caught, I went to the doctor/nurse and told them straight up that I got brain injury, got mental health, and I'm on Suboxone. Bad mistake... I may as well say I'm a heroin addict... As soon as I mentioned Suboxone then things changed. They didn't even want to listen to my brain injury or mental health... They've turned around and thinking, “well what disability? You're just used to drugs mate you'll be right...” And what they did was they'd make me drink a little bit of water, open my mouth, hand me a strip, put it under my tongue and show them that it's gone, stand there for 10 minutes after it's dissolved then go back - it's embarrassing and degrading actually. Well, now everyone in jail can see this, and everybody knows I'm on it so now I'm getting drama off criminals.”¹

When some participants described the disclosure of their disability being met with apathy or dismissiveness, it was clear that a lack of skills or awareness of people working in the criminal justice system were not the only factors driving the response. Many felt that there was a pervasive view among workers in the system that people with an ABI were less 'deserving' than people who had other disabilities; others felt that people with an ABI were so prevalent in the system that it was viewed as the norm and thereby undeserving of any special measures.

¹ Participant Interview dated 4 May 2015.

For most participants, contact with police and the criminal justice system occurred before they sustained an ABI. Many expressed a perception that past offending behaviour, rather than their disability, coloured these interactions and police—as well as court staff, lawyers and prison officers—did not recognise their vulnerability or their support needs. For example, some participants said that police were not aware of their disability and did not ask about it either. Some participants said that even where they disclosed their ABI, police lacked an understanding of what it was and felt that there was no adjustment made to accommodate their disability. In some cases, people being interviewed by police as suspects felt unable to raise an issue such as having disability. This power imbalance and the stress inherent in being interviewed by police, as well as the cognitive impairment related to their injury, affected comprehension and the ability to respond to the situation.

“They look at you and go ‘well you’re just a goose having a bit of a head let down because we’ve locked you up...I’d call the Sarge but he’s too busy, because he’s having a brew... I’ll catch up with him later.’ But his later is two and half days when he comes back on his next shift. Well in that time, you could be dead because you could’ve committed hari-kari (suicide) in the cells because they don’t want to listen (to the fact that) you got a problem.”¹

Participants identified the important role that lawyers can play if they are aware of a client’s ABI, in communicating their circumstances to the court and proposing court processes or sentencing options that take account of their needs. While many participants described having positive experiences with lawyers, others felt that inexperience or lack of time meant that an ABI was often missed or viewed as irrelevant.

“Like, if some bloke’s at court, and he just gets a legal aid [duty] solicitor, his legal aid solicitor is going to ask his basic details, walk in, give them to the magistrate, talk a little bit of nonsense, and really not do much. That kid’s probably got one of the worst IDs... or an ABI... that’s why he keeps getting pinched.”²

Once in prison, participants felt that prison officers, even those who were assigned as their case managers, did not see it as their role to support them, but instead only to maintain prison order. Others spoke of the positive difference it made when they felt custodial officers were there to support them.

1 Justice User Group Meeting 9, 18 October 2016.

2 Participant interview dated 22 April 2015.

Participants were critical of the services delivered by Justice Health in prison, with some describing experiences where their symptoms, commonly associated with an ABI, were not investigated and incorrectly treated with psychiatric drugs. There was a strong sense among participants that doctors in prison would overlook a person’s ABI because it was too difficult to diagnose and so prevalent in the prison. Instead, participants described an over-reliance on antipsychotic medication:

“That’s where the doctor comes back into it and you gotta go and see him about ‘[a]m I alright or is there something going wrong?’ and at the end of the day they didn’t give a shit, they’d just give you (antipsychotics). So you’re just wandering around doing the Largactil¹ shuffle, you don’t know what day it is, you’re just a vegetable, carrot, you know? It just wasn’t right, the way that they did it, because they didn’t care.”²

“I saw the head doctor in the prison was someone that I’d seen about 8 years ago in a psych unit. As soon as he saw me, bang, psych drugs, even though I hadn’t been on them for 6 years. He didn’t want to hear anything, ‘No, you need medication’. They shouldn’t have done that.”³

FEARFUL, ANXIOUS AND AFRAID

Many participants described interactions with police, courts, lawyers and prison as fear-inducing, even terrifying, experiences. While it could be said that many people experience these feelings when they encounter the criminal justice system, participants felt that their ABI heightened their anxiety and made them feel more exposed and vulnerable. Some participants described possessing enough insight to know that they may not understand what is happening or be able to explain themselves but not enough confidence to ask for help. In the words of one participant:

“For me, even to be alone with the solicitor, it’s terrible, but to be alone without a solicitor, I had no idea what, if any, rights I had, or what I could do and I didn’t question or anything. I didn’t ask, I didn’t have the courage to ask. I just went along.”⁴

1 Largactil is the trade name for Chlorpromazine, an early antipsychotic drug known for causing Parkinsons’-like effects upon patients. Ref: Whitaker, Robert Mad in America: bad science, bad medicine and the enduring mistreatment of the mentally ill (2002) Basic Books, New York, 144.

2 Participant interview dated 14 July 2015.

3 Justice User Group meeting 10, 8 December 2016.

4 Participant interview dated 27 April 2016

Self-medicating through substance use or avoiding contact with court, corrections or police was a common form of dealing with the fear and anxiety that the criminal justice system induced, with one participant describing:

“Through the decades, when attending court I’ll get up earlier, and I’ll go and use drugs first to be able to cope with it.”¹

Participants felt that their ABI was a weakness that could be exploited in the criminal justice system. For this reason, some participants who were aware of their ABI were reluctant to disclose their disability to anyone working in the system. There was particular caution around disclosure of their ABI in prison, for fear that this would expose them to exploitation by prison officers and other prisoners, because of the perception that it is a “dog eat dog world in there”. As one participant explained:

“To be seen to be seeking help for anything, you’re putting yourself in a position to be a target, however ridiculous it is, and it is, but there’s all these people, god knows where they’ve come from or what their problems are. But anything to focus on is probably better than focusing on here [points to himself], so let’s target him. So my experience was if you’re seen to be seeking help of any sort, you’re putting yourself in a position to be targeted and hurt physically, which happened a lot.”²

For many participants, interaction with the criminal justice system—police in particular—began early in their lives. Many participants described experiencing violence at the hands of police, which left them feeling powerless and vulnerable within the criminal justice system and fostered their fear of police and the justice system more broadly.

“I was arrested in a public place and I was put in the back of divvy van and I was taken to... some station and I was really frightened of these men. They didn’t say anything nice to me and they were rough, so yeah, I had a lot of fear with that experience.”³

The repercussions of these negative early interactions were still being felt years down the track, limiting the participants’ willingness to seek and receive support. Participants also felt that, by the time they had an

1 Participant interview dated 22 April 2015.

2 Participant interview dated 27 April 2016.

3 Participant interview dated 27 April 2015.

ABI, they already “had form”, which many felt exposed them to harsher treatment at the hands of police.

DISRESPECTED

“[T]hey don’t treat you with respect. You try and talk to them with respect but they don’t... they’re just like ‘...[l]ook at her... She’s a bit of shit. She’s a junkie’. They call you junkie slut. So why would I have faith in the police?”¹

Project participants described feeling disrespected at each point of the criminal justice system. Beginning with the police, almost all of the participants felt that it was commonplace to receive disrespectful treatment, contributing to their feelings of fear and anxiety and setting the tone of their future interaction with the system. In an environment where respect was perceived to be absent, some participants felt unwilling to communicate that they had an ABI, because they did not believe the disclosure would lead to support being offered or, worse, would put them at risk of being taken advantage of. In many cases, participants were more focused on getting through the interaction as quickly as possible. This meant that there were instances of miscommunication or non-communication, with participants not understanding what had occurred, sometimes with major consequences. Some participants said that they were treated well when they behaved appropriately towards police, but all were able to draw upon experiences when police had been violent or abusive towards them.

Most participants had themselves been victims of violence or abuse. A small number had reported this to police and were required to cooperate with a formal investigation. One participant, a victim-survivor of family violence, found that her cognitive impairment affected her capacity to be understood and that instead of being supported to provide information, her complaint was “not taken seriously”.²

Participants who had cooperated with an investigation said that it was not a positive experience and felt they were treated poorly because they were known as offenders themselves. As a result, participants felt that police were only interested in investigating the offence but not in supporting them as they might with other victims, because of their offending history. These participants said they did not receive clear or helpful information or support around the investigation or criminal trial or victims of crime processes, eroding their respect for the police along with their hope that their identity as an offender in the eyes of the system would ever fade. As one participant described:

“I got assaulted in a boarding house... Then I had to go to the police station to see them... when they found out that I was in trouble with the law – then

1 Participant interview dated 28 May 2015.

2 The concerns of people with a disability around reporting abuse and violence are comprehensively catalogued and explored in the Victorian Equal Opportunity and Human Rights Commission, *Beyond Doubt: the experiences of people with disabilities reporting crime 2014*. We are also aware that Victoria Police have committed to implementing all the recommendations of *Beyond Doubt* and that Victoria Police are developing a disability action plan in response to its own report which led to the establishment of the Priority Communities Division, *Equality is Not the Same: Victoria Police Response to Community Consultation and Reviews on Field Contact Policy and Data Collection and Cross Cultural Training 2013*.

they changed. [T]hey pretty much didn't want to know me after that..."¹

Similarly, participants felt that courts – from the point of entry to the point of departure – were, overwhelmingly, places where disrespectful treatment was commonplace. One participant described the way that he was treated before he even got inside the court room as impacting on his perception of the legitimacy of the process:

“It's a situation going into the Magistrates court, you know you go in and you throw all your stuff into the basket and through the x-ray machine. Well I've got a silver tooth, soon as I went through they bailed me up and didn't believe that that's what it was. You know, it's innocent until proven guilty. But just going through to even try and get into the joint, it's guilty until proven innocent. That really does your head in.”²

Inside the court room, many participants described feeling detached from the court experience; alienated by the confusing language used by judges or Magistrates and otherwise ignored. Many felt that the reasons behind their offending were overlooked and any opportunity to describe the impact of their circumstances on their offending to mitigate their sentence was lost. Many felt that their lawyers did not communicate the things they believed to be important to the court. Others felt that the impact of their sentence, in light of their circumstances, wasn't given adequate consideration, with one participant describing the loss of his long term public housing residence as a consequence of this term of imprisonment as an irrelevant consideration to the Magistrate, lamenting:

“They just didn't give a flying fuck where I ended up.”³

By contrast, those who had experienced solution-focused courts described feeling engaged in the process, largely due to the respectful way the Magistrate conducted the hearing and interacted with them. As a result, those participants respected the Magistrate and felt a sense of personal accountability not to let them down. Participants attributed the respect for that relationship to their rehabilitation and lack of further offending.

Relationships with community corrections officers were overwhelmingly described as negative and disrespectful; primarily due to the perceived lack of care (and time) they had for people attempting to complete orders. Participants felt that community corrections officers dismissed behaviours associated with their disability which interfered with their compliance with an order as inadequate “excuses”;

1 Participant interview dated 4 May 2015.

2 Justice User Group meeting dated 4 August 2015.

3 Evaluation interview 1, dated 8 December 2016.

and rarely sought to moderate their response to accommodate the needs of participants.

Of course, there were examples of positive experiences as well – community corrections officers that treated them “like a person”¹, or that seemed to care about issues such as housing instability or lack of support – but these experiences were overwhelmed by a tide of negative experiences.

In prison, calls for help were frequently ignored and participants communicated a strong sense that those who worked within the prison were there to maintain security, not provide support:

“When I was in there, I felt as though I wasn't heard. Every time I spoke, I felt like I wasn't being listened to.”²

Participants also described being taunted and teased by custodial officers for asking for help and many described experiencing or witnessing custodial officers using violence towards prisoners:

“The screws aren't there to help. They egg you on. You see some girls that aren't quite right. You see them, when I was in the slot, I was looking through my grill one day and so called, they're meant to be high, they're the high screws, kicking on some poor girl. She's not quite right, she's in a straight jacket and they're kicking her mattress and this and that. And they just get away with it. And they just chuck them all on psych meds just to shut them up. To make the jail run easier.”³

CONFUSED

“Sometimes you don't know what's going on. Sometimes you're that overwhelmed. I've been in shock and I haven't been able to talk properly. So they've thought ‘OK, she's really over the top on alcohol here’ but it's also because I'm frazzled. I don't know what's going on. I got picked up for defending myself. I was the one that got charged. I couldn't believe it.”⁴

Interviews with participants revealed that people with an ABI often cannot understand what is happening during a police interview, at court and even in prison. This is due to a combination of stress and the symptoms of their brain injury.

1 Interestingly, a video featuring users of the Red Hook Community Center used this same terminology to describe how the experience of therapeutic justice, in particular the interpersonal approach of the judge involved, made the person feel and encouraged them to take responsibility for their behaviour.

2 Participant interview dated 7 June 2016.

3 Participant interview dated 28 May 2015.

4 Justice User Group meeting 8, 6 September 2016.

“The things I hear are very dismissive, in the court. It’s real heavy. Real heavy on your brain. And you try to listen, by the time you understand what’s been said, something else has been put in front of you... the whole time I was there, I’m thinking ‘I’m getting locked up here’ and the words just went straight over my head... Because I was nervous and they speak too quickly. It’s like you’re playing catch up all the time. Like I said before, they ask you one question and by the time you understand the question, they’ve rattled off another one.”¹

Some of these experiences can be seen as ABI-specific, where the person’s cognitive impairment seems to have made it more difficult for them to understand what is occurring and respond appropriately. Some accounts, however, could equally apply to people who are vulnerable for a whole range of reasons, or even simply to people who do not have legal training. Describing any person who lacks professional legal training as ‘vulnerable’ or ‘disabled’ certainly challenges the way that we normally understand these terms, but this is precisely the effect that the court environment has on many people.²

Participants’ stories about not turning up to court or turning up affected by drugs or alcohol were connected with stress, confusion and the belief that attending court automatically meant going to prison. When participants almost uniformly describe being so fearful and anxious that they deliberately avoid court, or become so substance affected that they do not know what occurred at court, it becomes clear that this systemic failure of the criminal justice system to respond to the needs of its users may, for users of the justice system, facilitate a failure to understand obligations imposed by bail, parole or corrections orders, and an incapacity to comply with them successfully without support.

Participants spoke about how the language used in court added to their confusion with one participant reflecting:

“The judges throw around big words, you know, I’m thinking what the shit is she on about?”³

However, participants were quick to mention the value of having a lawyer to explain the ‘jargon’. Interestingly, none mentioned their own legal representatives using jargon or being difficult to understand, but only spoke of them spending too little time to take adequate instructions about their circumstances, including their ABI.

Some participants who had experienced solution-focused courts, such as the Assessment and Referral Court⁴, described a much more positive experience, where they felt respected as participants in the process.

- 1 Participant interview dated 2 June 2015.
- 2 Asquith and Bartokw-ak-Theron, ‘Policing Precariousness: ontological and situational vulnerability in policing encounters’, 2016, in press. Cited with permission from the authors.
- 3 Participant interview dated 20 May 2015.
- 4 The Assessment and Referral Court is a specialist court list available to meet the needs of people charged with criminal offences who have a mental illness and/or a cognitive impairment. The list is currently only accessible at the Melbourne Magistrates’ Court, though there are plans to expand to at least one other location in Victoria.

Participants gave examples of misunderstandings that occurred while they were in prison which resulted in serious consequences. This included ending up “in the slot” (in solitary confinement) or in protection, which can put their health, safety and wellbeing at risk as well as impact upon their capacity to access programs needed to become eligible for parole.¹ Some of these issues, for example missing the correct time for medication dispensation in prison, seemed to be directly related to cognitive function, as demonstrated by the experience below:

“That’s the reason you got in that shit, because you aren’t thinking properly... You can be in prison and they can call meds and call this and all that but sometimes... well it’s happened to me, because of the ABI, my mind’s been in one other place all together, I’m not even here. And if you don’t hear the call and you aren’t there in 2 ½ minutes, you miss out. And that’s it... that can put you in a psychotic episode and next minute, you’re in the slot. With the canvas dress on.”²

Participants explained that it is the way that custodial officers respond to prisoners that seems to cause problems as much as the prisoners’ level of understanding. For example, project participants described the frustration of receiving inconsistent information from prison officers:

“If you see six different screws, you’ll get six different answers on the one subject. If they don’t know what’s going on in their jail, how are you meant to figure it out?”³

Some also described custodial officers being evasive about critical matters such as applying for parole or housing, when those officers were the only source of information and support available to the prisoner:

“You don’t get parole unless you’ve got someone out there helping you... that’s the truth. You can fill out the forms yourself, but all the stuff arounds they give you, you’re not meant to understand. You’re left in the lurch. There are so many people in jail now that are applicable for parole, but they wouldn’t know how to fill out the paperwork.”⁴

Custodial officers are the fundamental support system available to prisoners, yet the experiences of participants demonstrate that the attitudes and behaviours of custodial officers, their limited skills and

- 1 See Victorian Ombudsman, Investigation into Deaths and Harm in Custody, 2014.
- 2 Participant interview dated 2 June 2015.
- 3 Participant interview dated 28 May 2015.
- 4 Participant interview dated 2 June 2015.

experience, along with a frequent turnover of staff meant that the support available was inadequate. Further, participants consistently described being unaware of (and denied having contact with) housing support workers, disability support workers and/or pre and post-release support caseworkers in prison, despite the fact that these supports are meant to be available.

Participants agreed that attempting to complete a community corrections order is an enormous challenge for a person with an ABI and complex needs. Factors such as too many conditions, a lack of support, inconsistent supervision, appointment times and locations, and the frequent turnover of community corrections officers were all described as barriers to completing an order for a person with an ABI and caused one participant to remark:

“I don’t think the word consistency is in the justice vocabulary...”¹

It was the attitude of community corrections officers, however, that roused most negative responses from participants, who felt that their need for greater support and leniency in relation to breaches that were a consequence of their impairment, and often confusion or memory issues, should have been recognized and accommodated. While many participants accepted that community corrections officers were overloaded and time poor, others felt that they did not possess the right skills or mindset to be managing people with very complex needs:

“She couldn’t understand my misunderstanding. She nearly locked me up for not turning up to my appointments, when I made it quite clear to them that it doesn’t matter what you say, I’ll forget. If you say, ‘come and see us next week on this date and this time’, I can write it down on a bit of paper and stick it on the fridge, but that’s no good. I don’t look at the date... but she wanted to lock me up because I hadn’t turned up three times. I just smashed the table and said ‘just bloody lock me up. I’m not going through all of this. Not again. I’ll just do my time and have nothing on my head.’”²

UNSUPPORTED

Experiences of feeling unsupported and alone in an environment that was hostile, frightening and confusing was a dominant theme throughout participants’ encounters with the criminal justice system. Even in circumstances where their ABI was known, many participants felt the support they needed to access and engage with the system was not made available. Most felt that their ABI was not acknowledged

1 Participant interview dated 27 April 2016.

2 Participant interview dated 2 June 2015.

or addressed, and no support or programs were provided around skills development for life with an ABI.

Even when a person’s ABI had been taken into account by a court in determining sentence, this seemed to have no impact on the services they received once in prison. One participant described:

“[I]t was more that she didn’t, wouldn’t take into account the sentencing act I was under and the support networks that I should have [had], that she should have been on the phone hooking me up with... before I got out from prison. That’s the worst thing. They... don’t want to learn that there are alternatives or that they are supposed to do it a different way because they’ve got ABIs.”¹

Experiences of poor relationships with community corrections officers, of being misunderstood, of feeling like a number rather than a person, and not receiving the support they required were common reflections participants made of community corrections. Some participants described being unable to establish a relationship based on trust, so that the interactions were insincere and the limited ‘support’ provided by the worker was ineffective.

“There’s no one you can ask for help, everyone you look at wants to breach you because you’re not compliant with this, or you’re not compliant with that. So the communication is bad between the person on the order and the actual case worker. You can’t be honest, you can’t be straight, you have to edit what you talk about, so it’s a con. It’s all a game.”²

Participants and a number of stakeholders were not optimistic about the capacity of community corrections officers to provide appropriate support to people on community corrections orders, especially those who have complex needs. As one participant described:

“[T]hey’re supposed to be your case worker, and you think that your case worker would help you if you had problems, but they won’t. Their job is to make sure you do your commitments, their job is not to help you, so that makes it real hard.”³

In prison, some participants felt that any support they may have been able to access in the community disappeared.

1 Participant interview dated 22 April 2015.

2 Participant interview dated 22 April 2015.

3 Participant interview dated 22 April 2015.

In prison it's like a waiting game. You're waiting three weeks to see a doctor or you wait two months to see a psych doctor. Or there's something wrong with your medication – too bad. Out here you can do that stuff. And they listen to you and they care about you.¹

Participants also spoke of barriers to the provision of interventions which are therapeutic, and of their identity as a person with a disability being eclipsed by other identities such as 'drug user'. The effect of this approach meant that certain behaviours which are common symptoms of an ABI were instead attributed a person's drug addiction and while this may have provided access to detox and rehabilitation, it left the possibility of cognitive impairment unexplored and untreated.

Echoing the experiences reported in the Victorian Ombudsman's 2015 Investigation into the Rehabilitation and Reintegration of Prisoners in Victoria,² project participants felt that, in prison, their ABI was not acknowledged or addressed, and there was little support or programs provided around skills development for life with an ABI. Many felt that there were so many people with an ABI in prison that there were not sufficient resources to offer support to everyone, with one participant observing:

“[T]he prison system is overloaded and can't cope with the amount of people that have got ABIs in there.”³

Others felt that the greatest barriers to supporting people in prison with an ABI were the limited skills and abilities of the prison officers as well as the inadequate services offered by Justice Health. Time spent in prison was described by many participants as wasted time as far as their rehabilitation and health was concerned. With a small number of exceptions, participants felt that they left prison in a similar or worse condition, physically, mentally and socially, to when they entered, consistent with the findings of other studies on prisoner health.

Many participants felt that the health services available in prison were significantly inferior to what they could access in the community and felt that their health issues were either disregarded, treated with suspicion, or invited unwelcome interventions such as the prescription of anti-psychotic medication or being put in the psychiatric unit, with one participant remarking:

“[You] can't say too much or they'll think you're a risk and they'll put you away. They'll put you in the slot. You're better off to shut your mouth when it comes to doctors in jail. Can't help your sickness in there.”⁴

1 Participant interview (3) dated 27 April 2016.

2 See Victorian Ombudsman, Investigation into the rehabilitation and reintegration of prisoners in Victoria, September 2015.

3 Participant interview dated 22 April 2015.

4 Participant interview (3) dated 27 April 2016.

Participants also described a lack of access to support and services in the community as a significant factor in their ongoing contact with the criminal justice system. Many participants had experienced (and in many cases, continued to experience) homelessness, including sleeping rough or inadequate, precarious and inappropriate housing, describing it as a constant source of worry and instability in their lives, keeping them socially isolated and contributing to their poor health and criminal justice outcomes. Some participants lost secure housing as a result of their imprisonment, the consequences of which included the denial of parole, ongoing homelessness, a reduced sense of hope, increased criminal activity and, in many cases, ongoing contact with the criminal justice system. Participants linked their offending behaviour to their lack of secure housing, explaining that the years of homelessness, uncertainty and stagnant waiting lists caused them to think prison might be a better alternative to living in the community:

“Still waiting, waiting, waiting. I may as well go do something wrong so I can get three hots and a cot.¹ That's what it's getting to.”²

For those who had access to housing, sustaining their tenancies without some measure of support was near impossible. Further, participants who were in temporary or transitional accommodation described feeling anxious about securing permanent accommodation and whether they would ever be able to sustain a tenancy if the (even limited) support they had access to was removed.

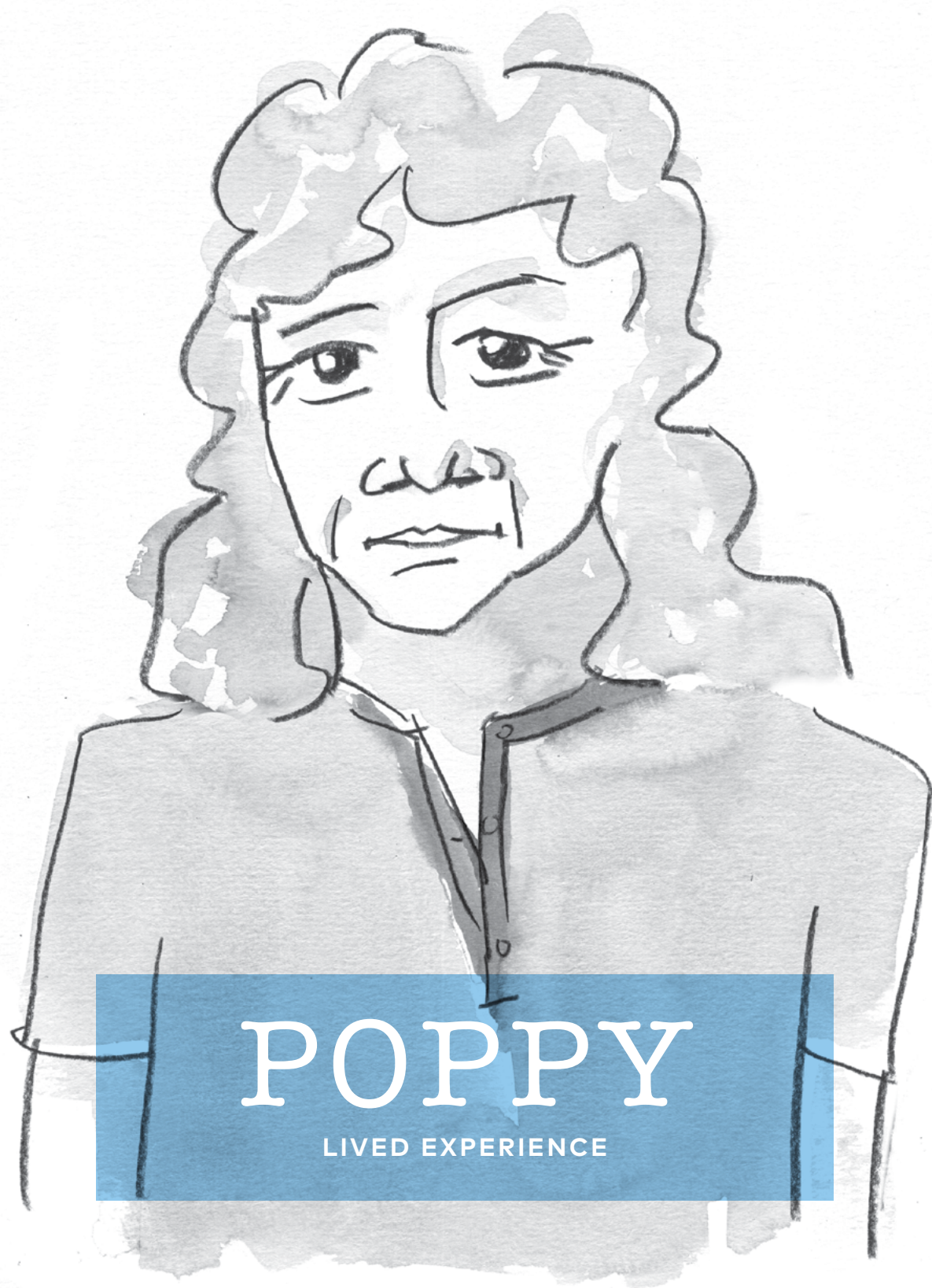
Some participants described interactions with mainstream disability services that made them feel unwelcome or undeserving of support. Others felt that while some disability services providers did their best to support them, they were poorly equipped to support someone with justice-related needs. Aboriginal participants felt that mainstream disability and mental health services often were unable to deliver culturally appropriate services but that Aboriginal services were not widespread enough to always be accessible.

“I had a problem with mental health services over in [Western suburb of Melbourne]... I wasn't on medication and stuff, they locked me up. They just didn't understand me, they didn't understand what the Stolen Generation was or anything like that. I thought 'aw man.' In some parts of the community they're ignorant to issues.”³

1 A colloquial term used by the Justice User Group to mean three hot meals and a bed.

2 Justice User Group meeting 9, 18 October 2016.

3 Participant interview dated 9 May 2016.



POPPY

LIVED EXPERIENCE

POPPY'S EXPERIENCE

Poppy has ABI as a result of violence in the family home as a child. Poppy later experienced violence at the hands of intimate partners. Police did not recognise Poppy as a victim, nor as someone with an ABI. As a result, rather than getting the help she needed, Poppy was driven deeper into the criminal justice system and, ultimately, imprisoned.

HOW THIS MADE POPPY FEEL

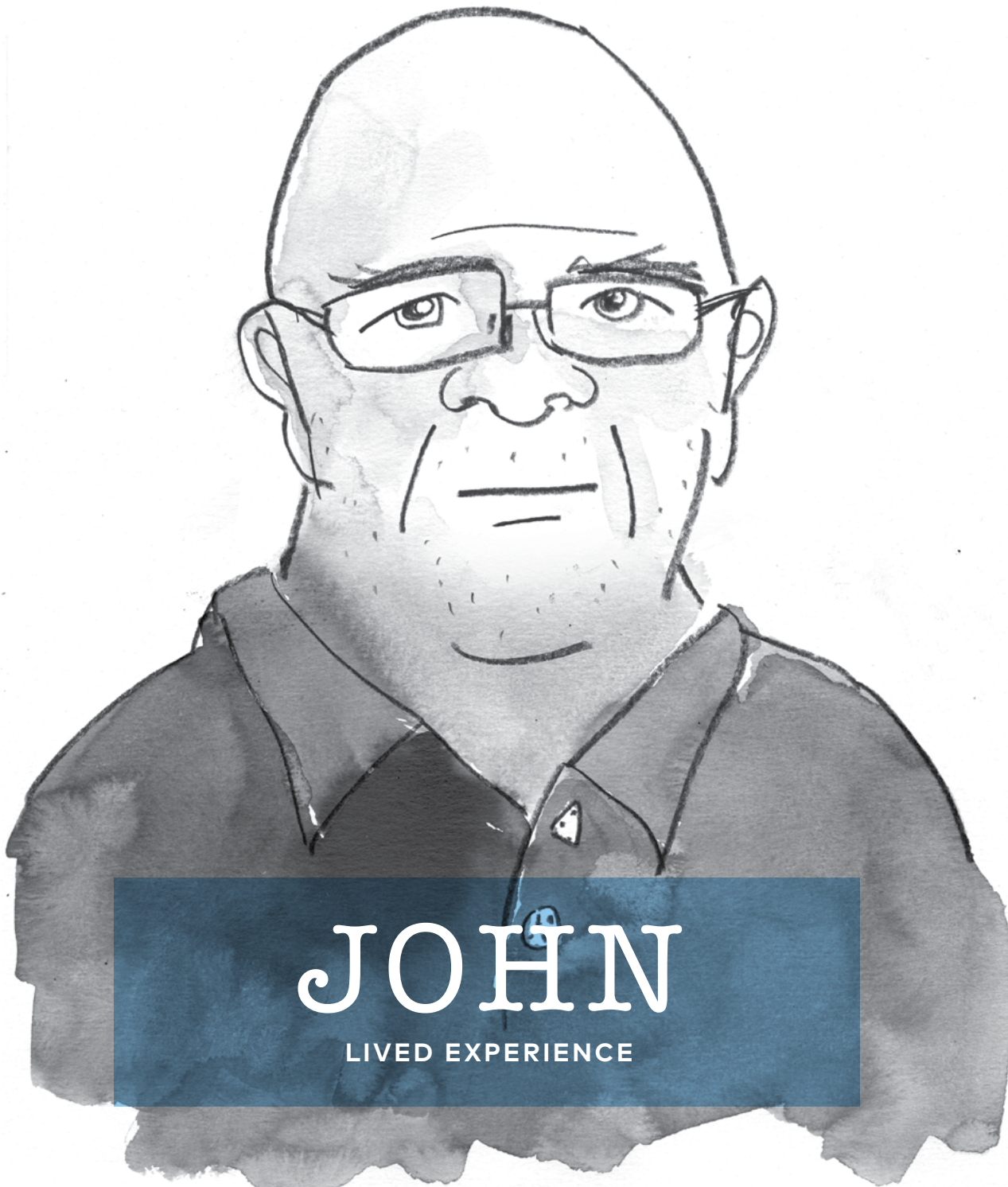
Frightened: Poppy was often alone with male police officers and was assaulted. **Disrespected:** Police laughed and jeered at her and did not offer her support. **Unsupported:** No-one recognised that Poppy might need support as a victim of family violence and as a person with an ABI.

THE OPPORTUNITY FOR CHANGE

- If Police were more aware of the links between family violence, ABI and offending, they might **recognise** when a person has an ABI or support needs and make appropriate referrals earlier in the process.
- A system-wide justice-related advocacy service would provide much needed **support** to people with an ABI and complex needs from first contact with the system and would be an interface between a person with complex needs and the criminal justice system.

What change looks like

All people are offered support if they need it when being interviewed by police. A justice advocacy service is available to assist people with support needs (including ABI) through the criminal justice system. The links between family violence, ABI and trauma are well known by people across the criminal justice system and referral pathways are established.



JOHN

LIVED EXPERIENCE

JOHN'S EXPERIENCE

John has been in and out of institutions since he was five. He began using drugs early in life, and as a result of this (and a number of overdoses) has an ABI. John also experiences mental illness and homelessness. In prison, John could not get the help he needed to rehabilitate. Equally, he struggled to complete corrections orders and parole in the community because of his ABI and the lack of support available.

HOW THIS MADE JOHN FEEL

Unrecognised: The impact of John's disability was misunderstood and he was made to feel undeserving of support, despite his ABI and significant support needs. **Unsupported:** John felt like custodial officers and community corrections officers were not there to help him, and they changed so often, that it was hard to keep up. **Confused:** John sometimes misunderstood or forgot what he was meant to do, and was confused when he faced penalties for non-compliance.

THE OPPORTUNITY FOR CHANGE

If people with an ABI in prison had access to genuine **support** from someone skilled and **respectful**, they would be more likely to engage with their rehabilitation and return to the community successfully. If such support could continue in the community, people with an ABI would be less likely to return to prison.

What change looks like

There are non-custodial case managers and clinicians in prison and in the community, giving consistent and continuous support to people with an ABI, mental illness and complex needs during their sentences.



RUSSELL'S EXPERIENCE

Russell grew up without his parents and started using drugs in his teens. He has an ABI as a result of drug use and it is made worse by epileptic seizures. Russell lived in his public housing property for 15 years until he was arrested for drug related offences. At Court, the Magistrate sentenced Russell to 22 months' prison, knowing this would mean Russell would lose his housing. On his first night in a boarding house, upon release, Russell suffered a seizure, was hospitalized and is still recovering and looking for appropriate housing.

HOW THIS MADE RUSSELL FEEL

Disrespected: the impact of imprisonment on Russell was not considered by the Magistrate. **Overlooked, dismissed, ignored:** Even though his ABI was known, people in the system didn't ask Russell about his needs or offer support.

“They might as well have thrown me on the street. I was so more settled when I had public housing – I was there for 15 years and all of a sudden I've got nothing – I lost everything that I had in that flat because I went to jail.”

THE OPPORTUNITY FOR CHANGE

- ABI must be recognised as a disability which gives rise to a range of **support** needs that must be attended to.
- Because of their vulnerability, people with an ABI need to be **supported** to retain or secure housing.
- If people feel they have been treated with **respect** – especially by Magistrates and judges – they are more likely to understand and comply with orders and less likely to re-offend.

What change looks like

ABI is recognized as a disability, deserving of recognition and supportive measures. Magistrates treat people charged with criminal offences with respect, and properly take into consideration their circumstances when determining appropriate sentences. Additional housing options and support are available for people with an ABI in contact with the criminal justice system.

“I like to think what I’ve been through is now going to be a stepping stone to making things different.”

SECTION 3

RESPONDING TO JUSTICE NEEDS

“This should just be the beginning. We’ve obviously worked out we’ve got a major problem on our hands and it’s just how to fix it and how to go about it...”

Participant evaluation interview 6, 8 December 2016

SECTION 3

INTRODUCTION

FOR ENABLING JUSTICE PROJECT PARTICIPANTS, FEELING IGNORED, FEARFUL, DISRESPECTED, CONFUSED AND UNSUPPORTED WERE REMARKABLY COMMON EXPERIENCES. VIEWING THE CRIMINAL JUSTICE SYSTEM FROM THE PERSPECTIVE OF THE PARTICIPANTS SUGGESTS THAT THESE EXPERIENCES—THOUGH THEY MAY MANIFEST IN DIFFERENT WAYS WHEN THE CONTEXT CHANGES—REMAIN RELATIVELY CONSTANT.

If these experiences persist across each of the interactions participants have with the criminal justice system, in the process of identifying systemic responses it may be useful to think of these experiences as reflecting the participants' **justice needs**.

Section Three of this report therefore develops a framework for understanding the experiences of project participants as reflections of three key justice needs: **recognition, respect** and **support**. Based on this framework, this Part of the report outlines recommendations—developed with the participants—to address the failure of the criminal justice system to meet the justice needs of the participants.

Throughout the project, the Enabling Justice project staff worked with project participants and members of the Justice User Group to develop their recommendations for systemic change. As recommendations were developed, they were tested with the Justice User Group during the group's meetings. Some were strongly supported, and others needed to be changed or refined in response to the input of group members. These recommendations for a criminal justice system more responsive to the needs of people living with an ABI are therefore the product of combined expertise of the project staff and project participants.

SECTION 3

IDENTIFYING JUSTICE USER NEEDS

WHEN THE SYSTEM'S FAILURES ARE HIGHLIGHTED THROUGH PROJECT PARTICIPANTS' EXPERIENCES, IT IS POSSIBLE TO IDENTIFY WHAT PEOPLE WITH AN ABI MIGHT NEED TO PARTICIPATE FULLY AND EQUALLY IN THE CRIMINAL JUSTICE SYSTEM, AND FOR THE SYSTEM TO OPERATE MORE EFFECTIVELY.

For example, when a person with an ABI describes being charged with breaching a community corrections order because they forgot to attend appointments, it is clear that the person needed access to greater **support** to have the same opportunity as someone without an ABI to comply with their community corrections order. In this example, the absence of **recognition** of the person's complex circumstances and their ABI meant that the support required was not made available to them.

The experiences of project participants and the research¹ enable the justice needs of people with an ABI to be identified, and the extent to which these needs are or are not currently being met by the justice system.² Identifying these justice needs provides guidance for how the criminal justice system might improve its responses to people with an ABI.

Of course, there are examples of approaches that are already being implemented in pockets of the system that are having a positive impact on people with an ABI and positive outcomes for the community.³ Some of the positive experiences of project participants signalled parts of the system marked by the presence, rather than absence, of a response to their justice needs. Indeed, building on these approaches may be the most effective way of introducing change to the system. For example, where simple, clear language is used by a judicial officer, or a person feels they were treated with **respect** from the moment they enter the court to the moment they leave, seemingly small cultural shifts can have great impact and be catalysts for significant change. One project participant described being motivated to get treatment for a substance-related disorder because the magistrate, a figure of authority and respect, engaged her in the decisions being made about her case and seemed to care about what happened to her.

¹ Leanne Dowse, Melissa Clarence, Eileen Baldry, Julian Trofimovs and Sharleen James, 'People with Mental Health Disorders and Cognitive Disabilities in the Criminal Justice System: the impact of acquired brain injury', April 2011. See also Sue Brown and Glen Kelly, 'Issues and Inequities facing people with an acquired brain injury in the criminal justice system', September 2012. Report prepared by Diverge Consulting for the Victorian Coalition of ABI Service Providers, 34.

² It is important to note that a number of changes have been implemented across the system in an effort to improve the service response to people with an ABI. For example, Corrections Victoria has appointed a team of specialized community corrections officers to work with people who are high risk and who have complex needs. While many participants have been in contact with the criminal justice system in the past two years, most participants may not have experienced any very recent changes adopted by a criminal justice organization.

³ For example, the value of solution-focused courts for people with an ABI and complex needs has been demonstrated both through the feedback from participants in this project as well as evaluations which have demonstrated their effectiveness. For example, see Department of Justice, Court Integrated Services Program: Executive Summary Evaluation Report, 2010; KPMG, Evaluation of the Neighbourhood Justice Centre, final report commissioned by the Department of Justice, December 2012.

JUSTICE NEED

RECOGNITION

“It's only going to make more people aware and its gonna help people have acknowledgment of this particular illness and the way that people... come in and out of the revolving door.”¹

ABI needs to be recognised as a disability within the criminal justice system. While this includes improving the use of screening tools and assessments, it is also about improving the awareness of ABI, its symptoms, prevalence and the kinds of support needs a person with an ABI might have.

“...not many people know, it does need more flyers, a few things put out there so people do know. Like cancer and that. Any other type of injury a person can get, ABI needs a bit more recognition too.”²

When a person with an ABI feels the need to say “this isn't a joke. It's not a joke in my head...” when referring to their disability, we must ask: what responses have they received which make them feel that to others, it just might be? ABI is not well recognised in the community, even though it is relatively common.³ In the criminal justice system, where people with an ABI are vastly over-represented, the experiences of project participants indicates that there is still inadequate recognition of ABI.

“Well, it's like you've got to knock your head into the brick wall of the cell for them to get any type of acknowledgement that you do have some type of issue....some police don't even know what an ABI is. They look at you blankly.”⁴

JUSTICE NEED
RESPECT

“So... these people will get the due respect they deserve. They’re just a human being like everyone else...”¹

For ABI to be recognised within the criminal justice system, the system must acknowledge ABI as a disability even though it often occurs alongside other forms of disability and disadvantage. Secondly, the system must recognise that a person with an ABI may have additional communication and support needs. Thirdly, the people working within the criminal justice system must have an awareness of the causes, symptoms and common support needs of people with an ABI. Finally, the system must make those supports known and available to people who have or are suspected of having an ABI.

While there is evidence of some targeted support and programs being available within the system for people with an ABI, many are insufficiently resourced to respond to the large volume of people who need to access them.

Is there more to this than a simple lack of recognition? Project participants felt strongly that because they were not born with their disability, others blamed them for it and found them less deserving of an empathetic or accommodating response. Of course, a mindset like this fails to grasp the complex circumstances which the participants have demonstrated may give rise to both disability and offending behaviour. Unfortunately, project participants felt that this mindset also exists in the broader community service sector, including disability, mental health and family violence service system, with one participant expressing the view that “most of them don’t want to deal with you”⁵ which further contributes to their experiences of isolation and exclusion.

The exclusion that participants experience may also be the result of how an ABI manifests in this group, as well as the structure of our health and social service systems. As studies have found, people with an ABI who are in contact with the criminal justice system are most likely to experience mild ABI alongside co-morbidities and are at risk of not having their ABI recognised.⁶ At the same time, the range of co-morbidities that a person with an ABI commonly experiences gives rise to various support needs. Yet, because our health and social service systems are structured to respond to discrete needs, people with an ABI often fall short of meeting the criteria to access these services. Alternatively, they may be required to seek services from a variety of providers (a challenge for anyone, let alone those with an ABI who may benefit from consistency), leaving them adrift and without the support they need.⁷ Wider recognition and understanding of ABI as a disability, and its far-reaching impacts, even when the injury is mild, are crucial steps in beginning to ensure people can access support.

- 1 (Previous page) Participant evaluation interview 2, 8 December 2016.
- 2 (Previous page) Justice User Group meeting, April 2016.
- 3 (Previous page) The prevalence of ABI in the Australian community is similar to the prevalence of intellectual disability, which occurs at a rate of 2.9 percent: Australian Institute of Health and Welfare, ‘Disability in Australia: Acquired Brain Injury’, Bulletin 55: (2007), 2. See also ABS Survey of Disability, Ageing and Carers 2012.
- 4 (Previous page) Justice User Group meeting, 18 October 2016.
- 5 Justice User Group meeting 2, 4 August 2015.
- 6 Martin Jackson, Glen Hardy, Peter Persson and Shasta Holland, ‘Acquired Brain Injury in the Victorian Prison System’, Corrections Victoria Research Paper Series Paper No. 04 April 2011, p 8.
- 7 Leanne Dowse, Melissa Clarence, Eileen Baldry, Julian Trofimovs and Sharleen James, ‘People with Mental Health Disorders and Cognitive Disabilities in the Criminal Justice System: the impact of acquired brain injury’, April 2011, 9.

For their interaction with the criminal justice system to be positive, people with an ABI need to feel respected. Respect is demonstrated by recognising where a person has or may have a disability or greater support needs, and making those supports available. People working across the criminal justice system must be trained about the importance of treating people respectfully, despite the fact that they are in contact with the criminal justice system and seen in that context as ‘suspects’, ‘accused’, ‘offenders’, ‘prisoners’ or ‘parolees’.

Participants shared examples of where, at each point of contact with the criminal justice system, they had experienced disrespectful treatment. At the extreme end of the spectrum, these included experiences of hostility, violence and aggression from those working within the criminal justice system. At the other end, examples included experiences where their disability and associated needs and human rights were disregarded or overlooked.

While there are some in the community who may feel that those charged with or convicted of a criminal offence are not deserving of respectful treatment, there are a number of reasons why an approach which tolerates or encourages disrespect has the potential to cause more harm to the individuals in the system and the community.

Disrespectful treatment may cause—either directly or indirectly—the human rights of people within the system to be infringed. In the context of the criminal justice system, which has the power to deprive a person of their liberty, the protection of human rights, particularly of people with a disability, is all the more important. A disrespectful environment can have cascading negative impacts for people with an ABI. The absence of respect makes effective communication difficult, increasing the chances that a person’s disability will not be recognised. If a person’s disability is unrecognised, the necessary supports for them to participate in the criminal justice process may not be made available. Finally, being unable to participate effectively in the criminal justice process can have grave consequences for a person with

an ABI, including a wrongful conviction or the imposition of a sentence that is inappropriate or excessive.

For the rights of people with an ABI to be respected and protected, it may be necessary to make a range of adjustments which promote the right to equality before the law, freedom from discrimination and the right to a fair hearing. This could mean changing the culture and language used in the legal system to make it more accessible, and could also mean ensuring people have the individual support they need to participate in criminal justice processes. Of course, this requires engaging those most affected in the process of identifying solutions and is consistent with the principle enshrined in the Convention of the Rights of Persons with Disabilities that people living with disabilities such as an ABI have the right to participate in the process of improving the systems that affect their lives.²

Another very significant drawback of a criminal justice system that tolerates disrespectful treatment is that a person's experience of such a system is likely to have an adverse impact on their prospects of rehabilitation. Procedural justice theory³ suggests that the benefits of having a system which is respectful and fair include greater compliance with the law. People who feel they have been treated respectfully and fairly by authorities, even while being sanctioned by them, are more likely to comply with the law and regard it as legitimate.⁴ The perceived fairness of the criminal justice system is influenced by a number of factors, but in one study involving offenders has been found to include:

- Voice: that offenders have an opportunity to be heard;
- Respect: that offenders are treated with respect;
- Trust: that offenders perceive decision makers as unbiased and competent;
- Understanding: that offenders understand decisions and why they were made.
- Helpfulness: that offenders perceive staff as caring and supportive of their needs for services or other assistance.⁵

Participants who felt they had been treated disrespectfully described feeling as though their disability was irrelevant and were more inclined to disengage from the criminal justice process, often to the detriment of their own rehabilitation and wellbeing. In the words of one participant speaking of the sentencing process:

“It’s the disrespectful way. I had one judge, he was being smart, and I couldn’t care less, he locked me up, he said you will be incarcerated for 6 months, I said ‘I couldn’t give a fuck!’ in the court room, I went off my head, he moved me out, got me taken downstairs. I went off my head, and I’ve never done that with a good judge, I couldn’t help it.”⁶

1 (Previous page) Participant evaluation interview 2, 8 December 2016.

2 Article 4(3) United Nations Convention on the Rights of Persons with a Disability.

3 Thibaut and Walker, *Procedural Justice: A Psychological Analysis*: Lawrence Erlbaum Associates, 1975. Pp. vii, 150; Tyler, *Why People Obey the Law*, Yale University Press, New Haven, 1990; Tyler and Huo, *Trust in the Law: Encouraging Public Cooperation With the Police and the Courts*, New York, Russell Sage Foundation, 2002, pp. 248. See also Tom R. Tyler 'Procedural Justice and the Courts', *Court Review* (2007) Volume 44, 26-32 and Tom R. Tyler, 'Why procedural justice matters' 2012, presentation at Community Justice 2012: the International Conference of Community Courts.

4 The experience a person has with the police is particularly impactful on whether the person views the criminal justice system as fair. For example see Mazerolle, Lorraine, Sarah Bennet, Emma Antrobus, and Elizabeth Eggin. 2012. 'Procedural Justice, Encounters and Citizen Perceptions of Police: Main findings from the Queensland Community Engagement Trail (QCET)'. *Journal of Experimental Criminology* 8(4):343-67.

5 Rempell, M. (2014) *Evidence based strategies for working with offenders*, Centre for Court Innovation, New York. See also Farley, E.J., Jensen, E., and Rempell, M. (2013). *Improving Courtroom Communication: A Field Test in Milwaukee*. New York, NY: Center for Court Innovation.

6 Participant interview dated 12 May 2015.

Set against the experience of a participant whose matter had been heard by a Magistrate in the Assessment and Referral Court, the impact that respectful treatment can have is clear:

“[S]he took a lot of time to see how you were going and what was happening in your life and why you were in jail. And I think, because I was on heroin at the time, she actually got me off heroin. She inspired me to get off heroin.... She could’ve just closed her book on me.”¹

Participants made links between the treatment they received when they were in the criminal justice system, the way they viewed the system and the impact it had on their lives. In the words of one participant:

“You have to respect people. It’s not hard.”²

The following features were identified by participants as necessary components of a criminal justice system that is respectful and fair for people with an ABI (and other complex needs):

- Respectful language
- Clear, understandable communication (in oral and written forms)
- Capacity to recognize disability and/or need for adjustments
- Availability of supports/reasonable adjustments
- Willingness to provide assistance

These factors bear resemblance to those identified above as the factors which have been found in other research to contribute to a perception of procedural justice. In many ways, these elements are simple. Many of them can be met without requiring significant resources to be expended or the system being drastically rearranged. Yet they require the people working within the system to have the requisite skills, attitude and incentive to meet them.

1 Participant interview dated 16 May 2016.

2 Justice User Group meeting 10, December 2016.

JUSTICE NEED SUPPORT

(WITHIN AND OUTSIDE OF THE CRIMINAL JUSTICE SYSTEM)

“It will save a lot of people going back to jail, it really will.”¹

People with an ABI often need support to be able to participate in the criminal justice system (including their rehabilitation) and in the community. Just as supports have been introduced for people with physical disabilities, supports must be available across the criminal justice system for people with an ABI.

An ABI can give rise to a person having significant support needs. As explained earlier, an ABI can result in memory loss, anxiety, loss of executive function and a reduced capacity to regulate emotions: all factors which participants have told us can make seemingly simple tasks overwhelming and navigating the criminal justice system almost impossible. For those in contact with the criminal justice system, an ABI rarely occurs in isolation.² Each project participant battled multiple challenges, ranging from mental illness to homelessness to substance use issues, with each adding a layer of complexity to both their support needs and the support system that they were required to navigate.

Yet, many participants were left to make their way through the criminal justice system unsupported. More than one participant felt that, by virtue of having an ABI, they were “set up to fail” in the criminal justice system. While the closure of mental health and disability institutions was seen by many as a step in the right direction, the subsequent failure to enhance support systems in the community, and the continual erosion of funding to organisations who perform this work has seen the rise of institutionalisation of a different kind.³ Rather than hospitals, our prisons now are residential facilities for those with significant support needs that are unmet by the community, and our criminal justice system has become a poorly equipped support system for people with complex needs.⁴

People with an ABI and complex needs must have access to support in the community if their contact with the criminal justice system is to be avoided or ceased. Likewise, ensuring that people with an ABI can readily access support to enable their fair participation in the criminal justice system is a key to breaking their contact with it. People with an ABI must feel that they have been able to access the support they need to participate in the process to the fullest extent possible.⁵ Although some participants acknowledged that in some parts of the system appropriate support was available (a few crediting it for allowing them to break contact with the criminal justice system), these examples were scarce and could have much greater impact if they were replicated throughout the system.

For a system to be supportive of people with an ABI, we must listen to people with an ABI about their experiences of the criminal justice system and, from those experiences, identify the type of support that might have made a difference. Support comes in many forms. At the more intensive end of the spectrum, it can mean supported living in a residential facility or case management services. At the other end of the spectrum, it might be as simple as a supportive environment in which a person feels comfortable to request help, or receives information in a way that they can understand. It may mean the communication of available assistive measures, such as an Independent Third Person at a police interview, or reminders to assist a person with an ABI to remember appointments, or to take medication, or to do a urine sample. In this way, recommendations which improve recognition and respect may also be examples of how support can be provided, and in the words of one member of the Justice User Group, have the potential to shift behaviour:

“...a lot of people are just a bit confused, if they’re put in the right direction, they’ll change, they will.”⁶

¹ (Opposite page) Participant evaluation interview 7, 8 December 2016.

² (Opposite page) Department of Justice, Acquired Brain Injury in the Victorian Prison System. Corrections Victoria Research Paper Series, Paper No. 04, April 2011; Dowse, Clarence, Baldry, Trofimovs and James, ‘People with Mental Health Disorders and Cognitive Disabilities in the Criminal Justice System: Impact of Acquired Brain Injury’, April 2011.

³ (Opposite page) Just as the Victorian Ombudsman found that Victorian prisons have become ‘warehouses’ for people with mental illnesses and cognitive impairments in January 2009, a joint report from the Prison Reform Trust and the National Council of the Independent Monitoring Boards in England and Wales, concluded that a failure to identify people in need of mental health care is leading to avoidable or damaging incarceration. It suggested that too often the courts were using prisons as “a default option” for people who should have been diverted into the mental health system, placing “intolerable strains” on prisons.

⁴ (Opposite page) Investigation into the rehabilitation and reintegration of prisoners in Victoria, September 2015.

⁵ As identified above, this is an important element of procedural justice.

⁶ Participant evaluation interview 7, dated 8 December 2016.

SECTION 3

HOW SHOULD THE SYSTEM RESPOND?

THIS SECTION OF THE REPORT ADVANCES SPECIFIC RECOMMENDATIONS FOR CHANGE.

Recommendations are addressed to criminal justice system as a whole, and to specific parts such as police, courts, the legal assistance sector and corrections, as well as the broader community.

Throughout the Enabling Justice project, as transcripts of interviews with project participants and Justice User Group meetings were analysed, project staff began formulating recommendations to respond to the unmet needs highlighted, or to promote building upon existing effective approaches where justice users said their needs were being adequately met.

As recommendations were developed, they were brought to Justice User Group meetings and feedback was sought from the group. Some recommendations received strong endorsement, while others were the subject of debate and required further development in response to feedback from participants.

Some recommendations were not discussed in depth with the Justice User Group because they did not relate common experiences. For example, recommendation 2 relates to family violence, and was not discussed within the group. However, it adheres as closely as possible to what individual project participants, particularly women, said about their experience and their needs in relation to the intersection of ABI and family violence.

The nature of the input of the Justice User Group in relation to each recommendation, and any debate that occurred, is noted throughout this section. Some recommendations clearly relate to one specific

justice need, while others involve elements of two or more justice needs, because the needs for recognition, respect and support are often interdependent.

WHOLE OF SYSTEM

Some issues experienced by the participants were endemic, requiring whole of system responses. Project participants felt that system-wide responses would have the added benefit of bringing consistency to the criminal justice system, a key missing feature of the system for many. Responses which would enable the criminal justice system to improve its recognition of ABI, treat people with an ABI (and those without) with respect and ensure they are able to access the support they need are described in this section of the report.

Recognition requires enhanced community awareness of ABI

“It’s a big health problem in the community and its part of the environment too, that’s created here...”¹

Despite its prevalence,² when compared with other disabilities such as intellectual disability, recognition of ABI as a disability in the community is relatively low. Participants felt that ABI was not well understood in the wider community and suggested that public awareness must be increased via an awareness-raising campaign. The participants felt that raising awareness was the first step to ensuring that people with an ABI are understood by the community as people with a disability, to be treated with respect and deserving to receive the support they need. The participants also felt that raising awareness of ABI and its causes would reduce future preventable brain injury.

To achieve a similar level of awareness of ABI in the community as other disabilities, there must be greater education about the causes and symptoms of ABI, its prevalence and the fact that it commonly occurs alongside other factors such as homelessness, mental illness and substance use disorders. Efforts need to be placed to removing the stigma associated with an ABI, particularly the view (which was felt by participants to exist) that people with an ABI are responsible for sustaining their disability and therefore less deserving of empathy and support.

Parallels may be drawn with the evolving response of the community to mental illness, and the lagging reflection of this response in the criminal justice system. Only through sustained campaigning, messaging and the attraction of government support and funding has this been

¹ Participant evaluation interview 5, dated 8 December 2016.

² Two percent of the Australian population have been found to have ABI, see: O’Rance L, Australian Institute of Health and Welfare, ‘Disability in Australia: acquired brain injury’, Bulletin 55, December 2007.

achieved.¹ ABI requires a similar level of attention if there is to be a significant shift in the capacity of the community and its supportive infrastructure to recognise it and provide an appropriate response. This is an issue of national importance and given that the Commonwealth government has taken a lead role in the establishment and delivery of the National Disability Insurance Scheme, it is appropriate that the Commonwealth government, along with State and Territory governments, address this issue.

RECOMMENDATION 1

THAT THE STATE AND COMMONWEALTH GOVERNMENTS BOTH CONTRIBUTE TO FUNDING A CAMPAIGN TO RAISE AWARENESS ABOUT ABI; ITS CAUSES; KNOWN RISK FACTORS, SYMPTOMS AND HOW TO SEEK HELP.

Understanding and responding to the links between family violence, ABI and offending will enhance recognition, enabling support to be targeted to those in need, and incarceration to be used only when it is necessary.

The experiences of project participants demonstrate some of the ways in which family violence, ABI and offending interrelate. Many participants disclosed experiencing family violence as children. For men especially, a transition from victim to perpetrator often occurred, with family violence offences forming part of their offending profiles, suggesting the possibility of violence being transmitted across generations as a learned behaviour.² For others, mostly women, being exposed to family violence as a child continued to impact their lives in many ways, particularly as they emulated the relationships they had observed as children, becoming involved in violent intimate relationships as adults.

All women project participants had experienced family violence, and women participants in particular drew a direct link between family violence and ABI: two women who took part in the project specifically nominated family violence-related assaults as a cause of their ABI. A 2011 Corrections Victoria study found drug overdose to be the leading risk factor for brain injury among the approximately 33 per cent of women prisoners who have an ABI.³ There are strong links between women prisoners' histories of abuse and trauma and their misuse of illicit and prescription drugs.⁴ When this fact is coupled with women identifying ABI as an underlying factor in their offending, for example because of reduced impulse control, a disturbing picture emerges of women being incarcerated for offending that occurs as either a direct or indirect result of family violence victimisation and resulting disability.

1 Examples include the reduced stigma associated with mental illness and the establishment of Beyond Blue, Mental Health Awareness Week, RUOK Day, and Headspace awareness campaigns.

2 See Rosemary Purcell, Gennady N. Baksheev and Paul E. Mullen 'A descriptive study of juvenile family violence: Data from intervention order applications in a Children's Court' *International Journal of Law and Psychiatry* 37 (2014) 558-563, 559.

3 Martin Jackson, Glen Hardy, Peter Persson and Shasta Holland, 'Acquired Brain Injury in the Victorian Prison System'. *Corrections Victoria Research Paper Series, Paper No. 04, April 2011*

4 Holly Johnson, 'Drugs and Crime: a study of incarcerated female offenders' *Australian Institute of Criminology, Research and Public Policy Series paper number 63, p. xiv.*

Yet the rate at which women are incarcerated in Victoria and across Australia has grown steadily over the past decade.¹

The current focus on preventing and responding to family violence, through the implementation of the recommendations of the Royal Commission into Family Violence,² is an important preventative step in reducing the likelihood of victims of family violence sustaining an ABI either as a direct or indirect consequence of violence. There is some limited data exploring the links between family violence, ABI and offending.³ Yet in general, there has been very little research undertaken on this topic.⁴ As identified by the Royal Commission,⁵ further research is needed to inform the policy and practice of family violence services, crisis accommodation services, health services and legal assistance services so that ABI can be recognised at the earliest opportunity and appropriate supports put in place.

Any such research should not be limited to understanding the prevalence of ABI among people who experience family violence,⁶ but should also canvas how people with an ABI who have experienced, use or currently experience family violence might be supported. This research should be user-informed, ideally engaging people with experience of ABI and family violence.

[Claudia's story](#) drew a direct relationship between the violence she was subjected to by intimate partners, and the offending that ultimately led her to being imprisoned. However, when it came to sentencing, Claudia did not think the full circumstances were grasped or taken into account by her lawyers or the court. There were several points in Claudia's journey where a more informed, respectful and connected response from the criminal justice system could have led to a different outcome.

Police could have kept Claudia safe and helped her escape family violence at many points in her journey. They could have recognised her ABI and treated her in a more respectful manner, ultimately allowing her to effectively communicate her need for help and support to escape from a violent relationship. Had Claudia been recognised as potentially having an ABI, treated with respect and also recognised as a victim-survivor of family violence, accessing a safety hub could have connected her with the support she needed to be safe. Safety hubs provide victim-survivors of family violence with support and immediate access to multiple health and welfare services. Safety hubs arose out of recommendations made by the Royal Commission⁷ and are currently being piloted across 19 locations in Victoria, and are now the first port of call for police interacting with victim survivors of family violence.

Later in her story, after Claudia offended, a more informed criminal justice system might have meant that the lawyer and court would have actively sought to draw out and understand the links between Claudia's family violence experience, her ABI and her offending. Understanding the links between family violence and ABI must extend to understanding and offering a practical, fair and compassionate response to women who offend but are also victims of family violence and have ABIs. This requires education and training of professionals across the system who interact with women in this situation, but it may also require

1 Australian Bureau of Statistics, 4517.0 - Prisoners in Australia, 2016.

2 Report of the Royal Commission into Family Violence, 2016.

3 See Angela Colantonio, Hwan Kim, Stefan Allen, Mark Asbridge, Josian Petgrave and Serge Brochu 'Traumatic brain injury and early life experiences among men and women in a prison population' *Journal of Correctional Healthcare* 17 July (2014).

4 As recognised in the Report of the Royal Commission into Family Violence 2016, at recommendation 171, which provides: The Victorian Government fund research into the prevalence of acquired brain injury among family violence victims and perpetrators [within two years].

5 Report of the Royal Commission into Family Violence 2016, Vol V, Chapter 31, page 193.

6 The Victorian Government's tracking against the recommendations of the Royal Commission into Family Violence states that "Work is underway on the design and scope of the research proposal and the identification of the people and organisations with the skills and knowledge to undertake this research."

7 Report of the Royal Commission into Family Violence 2016, Vol II, Chapter 13, page 272.

changes to the law to ensure courts are not committing women to custody needlessly, or as a result of their being victims of family violence.

In relation to bail legislation, there have been successive waves of significant reform, the most recent of which has responded to serious violent incidents involving people who were on bail.¹ The result is an emphasis on a single risk assessment about the risk posed to the community by a person seeking bail. Victorian bail decision-makers must now remand in custody any person before them who they believe poses an unacceptable risk of committing an offence – any offence. This policy can and has led to people being remanded in custody because they present a high risk of re-offending, albeit that the offence they may be most likely to commit is shoplifting or using heroin. This approach to the unacceptable risk test is likely to be contributing to the growing rate of women's incarceration, and especially indigenous women. It has the potential to overwhelm the prison system with the demands of managing people who do not need to be in custody, making the system less able to efficiently direct scarce resources to better identifying, monitoring and supervising those offenders who pose a serious risk of committing violent or sexual offences.

A number of legislative options have been explored in different jurisdictions² to limit the use of custodial sentences, particularly for the non-violent offences most commonly committed by women (such as theft) that produce limited harm to the community.³ More generally, it may be possible for legislation to place limits on the use of incarceration in cases that don't involve serious violence for people who are vulnerable and over-imprisoned for gendered and historical reasons,⁴ including women, Aboriginal and Torres Strait Islander people, and some people with an ABI and other disabilities. These mechanisms could include inserting sections into sentencing legislation that ask the judicial officer to have less regard to prior convictions and/or to explicitly satisfy criteria for committing a person to custody, that includes a requirement that the offence be of a serious or violent nature, and also that the value of imprisonment has been fully balanced against the likely impact on the person's physical and mental health, the historical and systemic factors that have contributed to over-incarceration (particularly for indigenous people), and the wellbeing of any children or dependants who are likely to be affected. For vulnerable people, even a short period of imprisonment can have devastating economic and social impact, so it is important that the law provides a clear framework for the best possible decision to be made in the first instance.

The Victorian government has recently announced it will establish a Sentencing Guidelines Council,⁵ a body that will provide a mechanism for representatives from the community, including victims of crime, to have a direct role in developing appropriate frameworks and ranges for guideline sentences in Victoria. The emphasis of this new policy, and that of the existing guideline sentence regime, is on the system producing more consistently harsh and lengthy sentences for offenders guilty of the most serious violent and sexual offences. However, there is no reason why this mechanism should not be used for representatives of the community to revisit and consider the appropriateness of using imprisonment for less serious offences, often committed by people who

- 1 The Hon. Paul Coghlan QC, Bail Review, First advice to the Victorian Government, 3 April 2017; The Hon. Paul Coghlan QC, Bail REview, Second advice to the Victorian Government, 1 May 2017; Victorian Government response to the Bail Review, May 2017.
- 2 The UK Baroness Corston report 2007 and follow up 2011-2014.
- 3 See Julian V Roberts and Gabrielle Watson, 'Reducing female admissions to custody: Exploring the options at sentencing' (2017) *Criminology and Criminal Justice* 1-22.
- 4 See Adrienne Walters and Shannon Longhurst, 'Over-represented and over-looked: the crisis of Aboriginal and Torres Strait Islander Women's over-imprisonment', Human Rights Law Centre, May 2017.
- 5 See Premier's Press Release 25 May 2017 'Victorian Community to have its say on Sentencing'.

have themselves been victims of abuse and are dealing with the ongoing psychological impact. The UK sentencing guidelines council, after which the Victorian equivalent is reportedly modelled, has issued guidelines on offences such as theft from a shop, which give clear guidance that imprisonment should not be used in many cases, particularly where a mental illness or disability are a feature of the case.¹

There is insufficient evidence to confirm whether, like women, people with an ABI are over-represented among those being imprisoned for non-violent and non-serious offences, such as theft. However, there is clear evidence that people with cognitive disabilities and mental illness are troublingly over-represented in general in Victoria's prisons. Therefore, any policy aimed at reducing the number of people incarcerated where it is not really necessary will benefit and help achieve some reduction in the incarceration of people with a disability.

RECOMMENDATION 2

THAT THE VICTORIAN GOVERNMENT CONTINUE WITH ITS COMMITMENT (IN RESPONSE TO THE RECOMMENDATIONS OF THE ROYAL COMMISSION INTO FAMILY VIOLENCE) TO UNDERTAKE RESEARCH INTO THE PREVALENCE OF ABI AMONG VICTIMS AND PERPETRATORS OF FAMILY VIOLENCE, REQUIRING THE RESEARCH TO BE USER-CENTRED AND TO INCLUDE THE IDENTIFICATION OF THE PARTICULAR SUPPORT NEEDS OF VICTIMS AND PERPETRATORS OF FAMILY VIOLENCE WHO HAVE AN ABI.

RECOMMENDATION 3

STAFF IN FAMILY VIOLENCE SAFETY HUBS SHOULD RECEIVE TRAINING ABOUT ABI AND ITS LINKS WITH FAMILY VIOLENCE, INCLUDING TRAINING TO CONDUCT ROUTINE ABI SCREENING, AND INFORMATION ABOUT CONFIRMED OR SUSPECTED ABI SHOULD BE RECORDED ON FAMILY VIOLENCE RISK ASSESSMENT TOOLS AND THE FAMILY VIOLENCE INFORMATION SHARING PLATFORM.

People who work in the criminal justice system must be able to recognize and respond to the needs of people with an ABI and complex needs.

¹ See Sentencing Guideline Council's Theft Offences Definitive Guideline, 6 October 2015.

While it is true that police, court staff and corrections officers cannot be expected to be experts in diagnosing ABI, mental illness, substance misuse disorders or other disabilities, receiving training about the risk factors which predispose a person to these conditions, along with common presentations and strategies to work with people experiencing those factors would likely assist all people who work at the coalface of the criminal justice system in their work. Because of the 'hidden' nature of ABI and its co-occurrence with other disorders,¹ as well as its links with offending behaviours, without training, people who work in criminal justice system may overlook a person's ABI, even where they might recognise the person's addiction or mental illness. Adopting an approach that is more cautious and treats all people as though they could be vulnerable in the interaction² is likely to benefit everyone. Using this approach, which has been called 'universal vulnerability' by researchers,³ people who work in the criminal justice system—especially police officers and corrections officers—might take positive steps to ensure that the person understands what is taking place during the interaction by using plain language, open-ended questions and asking people to put information into their own words. Rather than focusing on diagnosis, or disability (or any other) status, this approach focuses upon what is really important in the interaction: whether or not the communication is actually effective, understood and, therefore, fair, and what the person's needs might be to achieve this.

There is currently limited training provided to people in the criminal justice system on how to identify and respond to the needs of people with an ABI and complex circumstances. For example, although Victoria Police cadets receive some training on responding to people with challenging behaviours, in recent years, there has been a trend towards web-based training modules,⁴ which some police officers felt did not prepare them adequately for the real world.⁵ Once graduated, it seems that police have limited opportunities to access training about responding to people with a disability, and there is currently no specific training about ABI.⁶ This may explain to some extent why project participants felt that some police officers lacked a basic awareness of ABI, let alone strategies to respond to them. If police officers were more aware of ABI and more confident in identifying opportunities to divert people away from being entrenched in the criminal justice system, they might be more inclined to consider a diversionary approach for low level offending, which might include referrals to a community support organization.

Equally, courts, including judicial officers and registry staff, also need to be attuned to the common presentations of people with an ABI. An increase in the number of self-represented litigants in recent years⁷ has meant that more and more, people with an ABI are appearing before the courts without legal advice or representation, increasing the risk that their disability will be overlooked and the opportunity for intervention lost. As examined in detail in Part Two of this report, project participants repeatedly spoke of being confused and therefore fearful of what might happen, or of feeling disrespected and dismissed, as a result of the language used in courts by both judicial and registry staff. Project participants strongly felt that these professionals needed

1 Leanne Dowse and Eileen Baldry, 'Disability at the Margins: the limits of the law' (2014) Vol 23 No 3 Griffith Law Review, 370-388.

2 See Asquith and Bartok-wiak-Theron, 'Policing Precariousness: ontological and situational vulnerability in policing encounters', 2016, in press. Cited with permission from the authors.

3 Ibid.

4 Consultation with Victoria Police, West Melbourne Police station, 28 November 2016.

5 Consultation with Victoria Police, West Melbourne Police station, 28 November 2016.

6 Consultation with Priority Communities Division, Victoria Police, 18 April 2016 & 20 October 2016.

7 Access to Justice Review: Report and Recommendations, August 2016, Vol 2, p 471.

a better understanding of people with an ABI or other disabilities and complex needs, but that they also needed to stop using 'jargon' language.

Corrections Victoria employees—both custodial officers and community corrections officers—need to be trained as if they are working in a disability setting. This means being informed about the needs of the people they are working with and armed with appropriate strategies to engage in respectful communication with all prisoners, many of whom are likely to have a cognitive impairment. Given that thousands of offenders with an ABI go in and out of prison, and on and off community corrections orders, with disability undetected and undisclosed, a response which only addresses offenders with known disability will always be insufficient to reach all people in contact with Corrections Victoria with an ABI. Instead, other hallmarks of complex needs, such as chaotic lifestyle, drug and alcohol use and homelessness, or difficulty completing community corrections orders should trigger an attitude of caution.

RECOMMENDATION 4:

ALL PEOPLE WHO WORK WITHIN THE CRIMINAL JUSTICE SYSTEM MUST BE EDUCATED ABOUT THE CIRCUMSTANCES AND NEEDS OF PEOPLE WITH AN ABI AND ABLE TO RECOGNISE PEOPLE WITH AN ABI AND RESPOND APPROPRIATELY. ADDITIONALLY, IN RECOGNITION OF THE LARGE NUMBER OF PEOPLE WITH SUPPORT NEEDS IN CONTACT WITH THE CRIMINAL JUSTICE SYSTEM, PEOPLE WHO WORK WITHIN THE CRIMINAL JUSTICE SYSTEM MUST ADOPT A PRECAUTIONARY APPROACH TOWARDS ALL PEOPLE IN CONTACT WITH THE SYSTEM.

To experience recognition, respect and support the system must be connected and consistent.

“You know how you're gonna get this happening? The only way? Is if you are registered. Your ABI is registered...goes on your file and goes straight to the jack shop.”¹

While in this report and in the community, we refer to the 'criminal justice system', insights from justice users and stakeholders demonstrate that the 'system' often does not behave like one. In truth, the 'system' is a collection of independent agencies, each with separate responsibilities—for example, to investigate, charge and prosecute; to determine guilt and sentence; to monitor correctional order and

1 Justice User Group Meeting, 3 October 2015.

completion of sentence. Each part of the 'system' only interacts with a person while they remain in that stage of the process, shunting them to the next agency with little to no handover, no common database of information and limited reporting about the person's circumstances or needs. Information which is shared tends to be based around procedural matters: the charges against the person; the location of the offending; the person's sentence; their prior criminal history as well as some basic details about the person, such as gender and age, leaving the individual to communicate their needs and circumstances at every point of interaction.¹ It is little wonder, then, that people with an ABI commonly remain unrecognised in a 'system' which relies upon their memory and their comfort in requesting help; both factors compromised by the presence of an ABI. Further, the constituent elements of the system—and the limited ways that they are linked—are primarily designed with the needs of the people who administer the system in mind, not the needs of the people who come into contact with it as offenders.

Identification of an ABI is of little benefit if that identification does not follow a person through the criminal justice system. Currently, where police might identify or suspect that a person has an ABI, once a matter is referred to court or the person is remanded and passes into the custody of Corrections Victoria, that information is commonly lost. While some police are in the practice of recording a person's disability or particular needs on the police LEAP database following an interaction, the vast majority do not.² Inconsistent responses between and within the different parts of the criminal justice system is problematic for people with an ABI, who tend to respond best to consistency, routine and predictability. Some project participants expressed frustration at having to tell their story over and over, and at finding that information about their needs had not carried through to the next part of the system. Others expressed frustration that disclosure of their ABI failed to elicit a reliable or consistent response. For example, some participants described circumstances where their ABI was known by the court and taken into consideration in sentencing, yet in prison, it was either unknown or completely disregarded. This left them unsupported in a very frightening environment and unable to participate fully in prison opportunities (including programs necessary for being granted parole) or saw them released back into the community without support.

The lack of an information-sharing scheme across the criminal justice system is a significant barrier to improving the recognition of people with an ABI who are in contact with the system. Concerns about sharing information and protection of privacy should be acknowledged, especially in light of the power of the organisations involved and the inherent mistrust of those organisations by many participants. However, those concerns should not be a barrier to providing the support intended to benefit the people whose information is being shared. There are examples of where these concerns have been overcome with the necessary will; in fact, there are examples of systems that share information between trusted organisations even where a person does not provide consent.³

- 1 For example, a police brief of evidence which is provided to a court as the basis for a prosecution generally only contains the charges, basic details about the person, a summary of the allegations, witnesses and statements, the person's prior convictions.
- 2 Consultation with West Melbourne Police 28 November 2016; Consultation with Priority Communities Division, Victoria Police, 18 April 2016 & 20 October 2016.
- 3 Ending Family Violence: Victoria's Plan for Change introduces a family violence information sharing regime which will be excluded from the limitations of privacy legislation and enable the sharing of information with a trusted zone of prescribed organisations about a victim, where consent is provided and a perpetrator, even where consent is not provided, for the purposes of risk assessments and risk management planning, Victorian Department of Premier and Cabinet, 2016, p 60.

Although some members of the Justice User Group were concerned about the recording and retention of information about their disability ("...depends if they're gonna ride ya. Because they might start to treat you with a child respect"), most felt that the benefits of having their needs identified and communicated to each point of the justice system—relieving them of the need to retell their story, over and over—outweighed the risks that the information would be used to their detriment. That said, participants were quick to add that if their diagnosis was to be shared, they would want to be assured that this would lead to a response which took account of their needs, for example, offering an Independent Third Person, referrals to an advocacy or support service or opening up access to solution-focused courts and they would want reassurance that any information about their disability would be dealt with discretely.¹ In this way, the participants' justice need for recognition of their ABI, was closely tied to their needs for respect and support, as identification of their ABI held little value for participants unless it resulted in these needs being met and even had possible negative effects attached to it.

“As long as it wasn't... the way I see it, as long as it wasn't shared around so that all me mates and all the crims I knew, knew. It's one of these things, you know, you wear under your hat...”²

Finally, most participants felt that consent was a necessary element of any data recording or sharing system, and that, if people felt they would benefit from sharing information about their disability or needs, they would be more inclined to provide their consent to have the information recorded. Consistent with the United Nations Convention on the Rights of Persons with Disabilities³ and the participation principle expressed by the disability rights movement,⁴ obtaining a person's consent to record information should be a feature of an information sharing scheme. Although the Justice User Group did not explicitly recommend the establishment of a working group to oversee protocols for an information sharing regime, this would be a necessary feature to ensure any such scheme was operating as fit for purpose to be of benefit to the people whose information was to be shared.

RECOMMENDATION 5

THAT THE VICTORIAN GOVERNMENT INTRODUCE AN INFORMATION SHARING REGIME FOR THE CRIMINAL JUSTICE SYSTEM, THAT HAS THE CAPACITY TO RECORD A PERSON'S NEEDS, DIAGNOSES, AND THEIR SUPPORT PROFESSIONALS WHERE THE SHARING OF THAT INFORMATION IS FOR THE PURPOSE OF BENEFITING THAT PERSON AND THAT PERSON PROVIDES THEIR FULLY INFORMED

- 1 Participants were particularly concerned about information about their disability being disclosed to others in prison, as they felt it might put them at risk of stand-over or bullying tactics.
- 2 Justice User Group meeting, 18 October 2016.
- 3 Including, but not limited to Article 3 (a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons.
- 4 See James Charlton, *Nothing About Us Without Us*, University of California Press, 1998.

CONSENT. SUCH A REGIME SHOULD ENABLE SHARING OF HEALTH INFORMATION BETWEEN AGENCIES, INCLUDING NON-GOVERNMENT COMMUNITY SUPPORT ORGANISATIONS WHO SUPPORT OFFENDERS, SO THAT IT IS ABLE TO FOLLOW AN INDIVIDUAL THROUGH THEIR ENTIRE EXPERIENCE WITH THE CRIMINAL JUSTICE SYSTEM.

RECOMMENDATION 6

THAT THE VICTORIAN GOVERNMENT ESTABLISH A WORKING GROUP COMPRISING REPRESENTATIVES OF CRIMINAL JUSTICE SYSTEM ORGANISATIONS AND JUSTICE USERS WITH A RANGE OF DISABILITIES TO IDENTIFY THE INFORMATION SHARING PROTOCOLS FOR THE INFORMATION SHARING REGIME.

Recognition requires a universal screening tool across the system.

Various ABI screening tools have been developed in recent years¹ and have been found to be highly accurate in identifying when a person has an ABI, yet no tool has been accepted as the universal screen that workers across the criminal justice system use to identify a person who is likely to have an ABI. Of course, screening tools will never alleviate the need for neuropsychological tests, which provide a tailored diagnosis, including details about the location, nature and extent of a person's injury: critical information in assisting a person to understand their disability and to develop individual management strategies. But with the waiting lists for publicly funded neuropsychological testing in excess of two years,² a practical alternative is required, so that people already caught in the criminal justice system can access specialized programs and support in advance of a formal diagnosis.

Some discussions with project participants initially led us away from an emphasis on screening and diagnosis. For example, many participants said that even once they had a diagnosis of ABI, it was of no use to them because staff did not understand the impact that the disability had, or there were no additional resources or support available anyway. As discussed earlier in relation to a proposed information sharing regime, participants felt that being identified with a disability, in a prison context in particular, might make them more vulnerable to manipulation.

Our general approach to recommendations has been to focus on changing the system to be more accessible and inclusive for all its users, regardless of their diagnosis. However, this approach is not necessarily

¹ For example, a screening tool developed by Arbias Ltd in partnership with Latrobe University, is available to corrections staff case managers, but is not used consistently. Source: Jackson and Hardy, *Acquired Brain Injury. Screening, Identification and Validation in the Victorian Correctional System*, 2011, p93.

² Consultations with Arbias and Court Support Services August/September 2016.

inconsistent with also encouraging a system that better recognises and identifies when a person has an ABI where possible.

Screening tools are a necessary part of a system that is able to recognise ABI, and together with workers who are trained to identify and respond to ABI, and a system that can record and share a person's needs across the system, would safeguard against people with an ABI in contact with the criminal justice system continuing to fall through the cracks. As with the Justice User Group's views regarding information sharing, the enhanced recognition of ABI achieved through the use of screening tools, will only be positive if coupled with respect and if it has a purpose—in particular, helping people with an ABI to identify their needs and access support.

RECOMMENDATION 7

THAT A COMMON SCREENING TOOL BE DESIGNED WHICH WORKERS ACROSS THE CRIMINAL JUSTICE SYSTEM CAN BE TRAINED TO USE FOR THE PURPOSE OF IDENTIFYING A PERSON WITH A SUSPECTED ABI UNTIL A NEUROPSYCHOLOGICAL ASSESSMENT IS AVAILABLE, SO THAT THOSE PEOPLES' NEEDS ARE RECOGNISED AND ACCESS TO APPROPRIATE SUPPORT AND PROGRAMS ARE OFFERED AT THE EARLIEST OPPORTUNITY.

A respectful system facilitates access to justice for all people.

If a culture of respectful treatment pervades the criminal justice system, a constructive experience for all people, including those with a disability, remains possible. The reason why respect is so important to people with a disability is because they rely upon a system (and the people working within it) to make supports available that facilitate their access to justice. Access to justice doesn't just narrowly relate to a person's ability to secure legal representation, but more generally to their capacity to understand what is happening and why. It also relates to their opportunity to engage with that process by having a voice and being able to make informed decisions, such as whether or not to participate in a police interview, or whether to plead guilty or not guilty to a charge. Respect should not be mistaken for taking a 'soft' approach. Participants told us that engaging with their rehabilitation was often harder than switching off and being a passive consumer of criminal justice services.

The shift in attitudes and capabilities of those who work within the criminal justice system towards respect and fairness must be reinforced by the design of the system. This can be achieved by providing support or adjustments which accommodate people with a disability, such as

¹ Eileen Baldry, 'Disability at the Margins: the limits of the law' (2014) Vol 23 No 3 Griffith Law Review, 370-388, 376.

referral to a solution-focused court or an intensive case management service. Such adjustments allow a person with an ABI to experience procedural justice and remove the barriers to their rehabilitation.

When such a large proportion of people who have contact with the criminal justice system have lived experience of disability, substance use issues, disadvantage, poor educational attainment and trauma, a community whose social support net has failed is reflected. As a community, we should be conscious of the circumstances of people who are funnelled¹ into the criminal justice system, the links between entrenched locational disadvantage¹ and criminal justice system contact. Changing the trajectory of people with disadvantaged backgrounds and complex needs requires designing both our community services and our criminal justice system to be responsive to their needs.

We cannot provide a prescriptive recommendation here that outlines exactly what supports, programs and services should be offered to people in contact with the criminal justice system. There are some ideas that will be advanced in the following recommendations that have arisen from the particular experience and needs expressed by Enabling Justice project participants. But, in general, the specific content of any proposed supports, programs or services will need to be determined through the process of asking the people who are most affected about what they need.

RECOMMENDATION 8

THAT ALL PROGRAMS, SERVICES AND ORGANISATIONS THAT FORM PART OF THE CRIMINAL JUSTICE SYSTEM, SHOULD BE DESIGNED WITH A HUMAN-CENTRED APPROACH, TO ENHANCE ACCESS TO JUSTICE AND PROCEDURAL JUSTICE FOR ALL WHO HAVE CONTACT WITH IT.

A system-wide justice-related advocacy service is needed to support people with an ABI and complex needs

As identified earlier, information sharing between agencies within the criminal justice system may greatly reduce the need for a person with an ABI to relay information about their circumstances at each point of the criminal justice system. However, such a measure would not assist a person with an ABI with other challenges they face, such as remembering court dates, accessing appropriate services in the community or ensuring that the outcome and next steps are clearly explained.

Many people are in a state of crisis at the point when they are arrested for an alleged offence. They may be homeless, misusing alcohol and or other drugs, experiencing family violence, lacking treatment and support for mental health issues, or experiencing other factors that have indirectly propelled them into contact with police.

¹ Vinson, T, Rawsthorne, M, Dropping off the Edge Report (2015), Jesuit Social Services, August / September 2016.

At that moment, police find themselves responding to a person in crisis with no tools to address the underlying problems and little knowledge of how to link the person with appropriate support in the community. When a person has a cognitive disability and/or complex needs and is in crisis, it may be difficult for them to understand and comply with bail conditions that may be set by police following their arrest, including the requirement to attend court on a particular day, and the consequences if they fail to attend.

Later on in the criminal justice process, people experiencing these sorts of challenges may be able to be referred to the Court Integrated Services Program (CISP), which provides support, guidance, targeted community referrals and case coordination to people on bail in most Victorian Magistrates' Courts. But to access CISP, people have to make it through the door of the court in the first place and be able to communicate sufficiently about their needs and circumstances in order to be referred to CISP by a lawyer or judicial officer.

To address these limitations of the system, a justice advocacy service could perform the critical role of criminal justice system guide and advocate for people with complex needs from the point of police contact. This option was developed by the Enabling Justice project staff in response to observations shared by participants, and was tested with the Justice User Group, who supported the idea. A key piece of feedback from the Justice User Group was that there are various points during their criminal justice journey when people may slip through the cracks and into a chaotic or crisis situation, without any support around them. It may then be necessary for such a service, though targeted towards early intervention and supporting the initial court appearance, to be flexible and able to step in to provide a period of case coordination and support at any point during a person's journey through the system.

Examples of advocacy and referral services for persons with a cognitive impairment exist in other states and territories, that provide active support to defendants in criminal matters from the point of contact with police, through to their appearance at court.¹ An equivalent service in Victoria would require investment, though could perform various linking functions currently missing from the criminal justice system.

This service may best align with the objectives and role of the Office of the Public Advocate (OPA) that already coordinates the provision of justice support services² and is experienced in working with people who have a cognitive disability and who have had contact with the criminal justice system. Alternatively, such a service could function as an extension of CISP, which already has an impressive track record in relation to reducing recidivism³ and costs, saving between \$1.70 and \$5.90 for every one dollar spent on the program.⁴ While CISP's funding and oversight is tied to the court process and is currently only available for people on bail and facing charges in the Magistrates' Court,⁵ the success of the program suggests that it is a model well worth considering for either replication or expansion into other parts of the criminal justice system.

¹ See, for example, the NSW government funded criminal justice support network, a program of the Intellectual Disability Rights Legal Service in NSW.

² The OPA coordinates the delivery of a number of justice and disability related advocacy services such as the Independent Third Person Program and the Community Visitor Program. While these services are delivered by volunteers, and coordinated by OPA staff, OPA is experienced in delivering services to this group who often have complex support needs.

³ Victorian Auditor-General's Report, Problem-Solving Approaches to Justice, April 2010, p32.

⁴ DOJ economic evaluation of the CISP, 2009.

⁵ Magistrates Court of Victoria, Guide to Specialist Courts and Court Support Services, June 2014, p 12.

“If you can, recommend people to get onto the CISP / ARC program, that way they get support... CISP is more understanding of ABI. They take the time to make sure you understand what’s going on and they invite you to bring up any problems you might be having.”¹

If police were able to refer criminal suspects to such a service prior to filing charges, it could serve as a powerful tool to support police in much more frequently exercising the discretion to issue warnings or diversions. While judicial oversight is likely to be a key factor in the effectiveness of CISP, insights from the Justice User Group suggest that even when decoupled from judicial oversight, the person-centred nature of CISP case management, which coordinates and holds services accountable, has great value for people with a combination of cognitive impairment and complex needs.

“You feel like someone is helping you and you’re pretty much given a mentor that checks up on you and you have appointments with. They do little things to make sure that you’re fine. They’ll find out ‘Is your housing alright?’ What other things that you might have problems with, that they might be able to help to get you in a lifestyle where you might not do crime or just get you to the point where you can go to court properly.”²

Of course, the introduction of a justice advocacy and referral service would only be worthwhile if existing services in the community have the willingness and resources to assist people with an ABI to address the factors underlying the person’s repeated contact with the criminal justice system. It would also require those services to be resourced to support this marginalized group in the community who may not receive the support they need via the National Disability Insurance Scheme. Any such service must also be planned with the experience of Aboriginal and Torres Strait Islander peoples who have a disability in mind, and must ensure accessibility and cultural safety for those community members through its approach to staffing and staff training.

1 Participant interview dated 7 June, 2016.

2 Participant interview dated 7 June 2016.

RECOMMENDATION 9

THAT THE DEPARTMENT OF JUSTICE AND REGULATION FUND A CRIMINAL JUSTICE ADVOCACY AND SUPPORT SERVICE WHICH OFFERS SUPPORT TO PERSONS WITH A COGNITIVE DISABILITY OR COMPLEX NEEDS AT ANY POINT OF THEIR INTERACTION WITH THE CRIMINAL JUSTICE SYSTEM, INCLUDING POLICE, COURTS, CORRECTIONS AND PRISON.

Respect requires clear, accessible information and communication.

In recent times, Victoria Police has taken a number of steps to improve its response to people with a disability, including people with an ABI. This commitment is perhaps best evidenced by the creation of a Priority Communities Division,¹ which focuses on developing policy and appropriate responses to cohorts and communities that have high levels of contact with police. The Commander of the Priority Communities Division explained that

“[t]his is about changing the way we think, the way we operate and the way we draw on our community to help solve broader community problems.”²

Victoria Police’s responses to people with a disability have been informed by the Beyond Doubt report³ that focused on the way that police interact with victims of crime who have a disability. The complex profile of the project participants confirms that people with a disability are over-represented as victims of crime and as perpetrators,⁴ making it neither accurate nor helpful to categorise a person as just one or the other. Further, people with an ABI feel vulnerable in police interactions, whether they are victims, suspects or witnesses. This means that improving police awareness of disability and the accessibility of police services must also extend to people who have been arrested or are a suspect in a criminal matter.

1 The Priority Communities Division was established in 2013 to lead organisational cultural reform through service delivery and frontline engagement in policy; research, projects and capacity building; and stakeholder engagement.

2 Michael Green, Victoria Police’s Priority Communities Division: real change or just more talk?, *The Age*, 20 April 2014.

3 Beyond Doubt: The experiences of people with disabilities reporting crime, Victorian Equal Opportunity and Human Rights Commission, July 2014.

4 Equal Before the Law: Towards disability justice strategy, Australian Human Rights Commission, 2014.

RECOMMENDATION 10

THAT VICTORIA POLICE'S WORK TO IMPLEMENT RECOMMENDATION 5 OF THE 'BEYOND DOUBT' REPORT TO IMPROVE COMMUNICATION AND TRANSLATION OF DOCUMENTS INTO EASY ENGLISH BE EXTENDED TO BENEFIT DEFENDANTS AND SUSPECTS, NOT JUST WITNESSES AND VICTIMS OF CRIME.

Police must be able to recognise where a person has support needs, especially where it is known that the person has experienced family violence.

It is not only recognition of disability status, followed by an appropriate response that participants' experiences indicated a need for. They also demonstrated a need for recognition as full persons—neither as only a suspect, nor only a person with a disability, nor only a drug user and so on. In Claudia's story, her association with her violent partner who was being sought by police in relation to other offending seemed to obscure the fact that she was a victim of family violence. She received no help from police in relation to escaping a violent relationship, and the lack of interest shown by police in Claudia's experience of family violence made her even more unsafe, by showing her that no one cared or would do anything to help her when needed.

The Royal Commission into Family Violence heard that family violence can cause a woman to experience poor physical and mental health, including post-traumatic stress disorder, and to turn to alcohol and drugs as a form of self-medication:¹ all factors that can make a woman more vulnerable to sustaining an ABI and having contact with the criminal justice system. An awareness of the common impacts of family violence and the prevalence of experiences of violence, abuse and ABI among criminalised women must be developed across the criminal justice system, but particularly among police as the criminal justice system's principal interface with the community.

Recommendations made by the Royal Commission into Family Violence regarding the creation of safety hubs,² along with those relating directly to Victoria Police, including amending the Victoria Police Code of Practice for the investigation of family violence,³ the use of non-sworn employees with relevant skills in incident response and from a broader range of disciplines⁴ and the establishment of a Family Violence Centre of Learning to improve family violence education at all levels of the organization⁵ may have the effect of preventing someone like Claudia facing a similar response from police in the future. Had Claudia been recognised by police as potentially having an ABI, treated with respect, offered an Independent Third Person and also recognised

- 1 Report of the Royal Commission into Family Violence, 2016, Volume III, p 71.
- 2 Recommendation 37, Report of the Royal Commission into Family Violence, 2016.
- 3 Recommendation 41, Report of the Royal Commission into Family Violence, 2016.
- 4 Recommendation 49, Report of the Royal Commission into Family Violence, 2016.
- 5 Recommendation 42, Report of the Royal Commission into Family Violence, 2016.

as a victim-survivor of family violence, accessing a safety hub could have connected her with the support she needed to be safe. Therefore, in implementing the recommendations of the Royal Commission, Victoria Police should ensure that training provided to all members includes information about the prevalence of experiences of family violence and child abuse among women who have criminal justice system contact and builds skills around how to respond appropriately and sensitively.¹

RECOMMENDATION 11

THAT IN IMPLEMENTING RECOMMENDATIONS 42 AND 49 OF THE ROYAL COMMISSION INTO FAMILY VIOLENCE, AND IMPROVING FAMILY VIOLENCE EDUCATION AT ALL LEVELS OF THE ORGANIZATION, VICTORIA POLICE ALSO SEEK TO PROVIDE ALL OF ITS MEMBERS WITH REGULAR AND ONGOING TRAINING ABOUT THE LINKS BETWEEN FAMILY VIOLENCE AND ABI, IN PARTICULAR FOR WOMEN WHO COME INTO CONTACT WITH THE CRIMINAL JUSTICE SYSTEM AS BOTH VICTIMS AND OFFENDERS AND THE NEED FOR SENSITIVE AND APPROPRIATE RESPONSES.

Respect demands a culture of offering support.

The common experience of participants of disrespectful (and sometimes violent) treatment by police is greatly concerning. While some participants acknowledged that police had a very challenging job, they also perceived that many of those officers working at the coalface did not recognise, or have the skills to identify, that they were people who required support to fully engage in the process. Although Victoria Police has committed to improving its response to people with a disability, project participants' experiences indicate that there is room for improvement, not just in the way police respond to people with a disability but in the way police respond to all people they interact with. Improving the way that police treat all people will have a positive impact on people with a disability, whether or not it is identified or known.

The experience of one participant, who received the following response after disclosing his ABI and requesting the police provide an Independent Third Person, demonstrates how disrespectful treatment by an individual or organization can undermine the intention of policy initiatives:

“Police told me to ring my family members. I said what family members? They put it on to me. They said ‘You want one, you get one’.”²

- 1 Some practitioners refer to this approach as trauma-informed practice, which requires those working with people who are likely to have experienced trauma to have a basic understanding of how trauma impacts the life of an individual who is seeking services.
- 2 Justice User Group Meeting, 6 September 2016.

Disrespectful treatment that encompasses violence and abuse is criminal conduct and should be the subject of independent investigation. Where proven, such criminal conduct should result in appropriate consequences for police involved. Disrespectful treatment that does not involve abuse or violence is also serious. It has the potential to cause direct harm to individuals and undermine perceptions of the legitimacy of the system. Moreover, such treatment may limit the capacity for people with an ABI to communicate their needs or to seek assistance when they may need it. It may also taint associated criminal justice processes, such as the gathering of evidence of admissions and confessions. In the words of Claudia, who felt unsafe in police custody, due to past experiences of abuse and disrespect at the hands of officers, what she required was:

“Someone to stand between me and the police.”¹

Unfortunately, Claudia was never offered an Independent Third Person who could have provided this support.

The first experience of the justice system has the potential to colour a person’s view of the system so the support that is available for people with an ABI during interactions with police is all the more important. By approaching all people who interact with police as potentially vulnerable, and employing techniques that are likely to cause a person to view their treatment and the process as fair, police also increase the opportunities to identify comprehension difficulties themselves and the likelihood of the person disclosing their disability.²

Once needs are identified, programs such as the Independent Third Person program (ITP program)³ can assist a person with an ABI to understand and participate in the process. Further, positive value and better connection back to support in the community could be added to the interaction by referring the person to a criminal justice advocacy service of the kind proposed in this report. A universal vulnerability approach means police would stay attuned to the possibility of a person having particular needs, and would be open to asking that person to identify their needs, rather than being focused on a particular diagnosis.

Where people are able to access it, the ITP program clearly has value in improving communication and process in a police setting. In the case of people with a mild ABI, however, this benefit is not necessarily the result of highly specialised skills in communication support but because of having someone other than a police officer present to explain what is occurring in a way that the person can understand. Many participants were not aware of the ITP program and those who were reported having very limited access to it. While participants expressed some concern about the length of time it took for an ITP to be available, those who used the program believed that it had value:

“I think it changed the way the police asked the questions... I think they were a lot more softer. Softly spoken. Rather than in an interview room by yourself with a police officer and he’s very

1 Participant interview dated 7 June 2016.

2 Asquith and Bartokw-ak-Theron, 'Policing Precariousness: ontological and situational vulnerability in policing encounters', 2016, in press. Cited with permission from the authors.

3 The Independent Third Person program is a program of the Office of the Public Advocate (OPA). The program trains volunteers to provide independent support to victims, witnesses and suspects in police interviews or other formal procedures such as taking fingerprints or bail applications heard at a police station. Police must get an Independent Third Person, either a family or friend or a trained volunteer from OPA, where they are interviewing a person with a cognitive disability (including an ABI). Where police fail to provide an ITP, any evidence obtained during the interview should be not be relied upon. Despite the program not being offered as it should, demand currently outstrips supply for this important program.

daunting. Knowing that you had an independent third person there, you realise yourself that you’re not capable of answering the questions correctly, yourself. So you’re very slow on answering. Double checking.”¹

Participants who had not experienced the ITP program, particularly members of the Justice User Group, agreed that the presence of an ITP would have a positive effect on the conduct of police and that the reliability and speed with which an ITP could be sent was important, with one remarking:

“Because then they can’t pull their tricks and do the things that they would normally do without that advocate there.”²

Participants felt that police officers should be required to raise the availability of an ITP with every person they seek to interview, in the same way that they are required to give a caution to every person they arrest.³ However, some stakeholders expressed resistance to this idea, on the basis that it could be abused, for example by people who do not need it, but who simply want to delay the process. Requesting an ITP and waiting for one to arrive (and, quite frequently, coordinating a Bail Justice as well) takes a significant amount of time and police resources which may help to explain some of the underutilization of the ITP program in some regions⁴ and why only three (of 20) project participants could recall being offered an ITP. Despite this, demand is increasingly overtaking the ITP program’s ability to meet it.⁵

In its 'Breaking the Cycle' Report,⁶ OPA identified that its ITP client group were often under-supported, or ineffectively supported, by services in the community.⁷

The ITP program is well placed to intervene early in a person’s contact with the criminal justice system and bridge the gap in the support and advocacy service system. Rather than simply compensate for communication that should be more fair and accessible to begin with, the ITP program has the capacity to deliver a more responsive and professionalised ITP program. This could include the ITP program enhancing training to its volunteers, so that they would be competent to make appropriate referrals, identify options for bail and recommend that participants are referred into solution focused lists and/or court support programs. To ensure that the ITP program has the ability to keep up with demand, which is likely to increase, particularly if police were to be required to communicate the availability of ITP to all interviewees, the program, including its structure, resourcing needs and opportunities for expansion should be reviewed.

One option that should be considered in any review of the ITP program is a move away from a call out service to an 'in situ' roster service at all police stations. A necessary implication of such a change

1 Participant interview dated 2 June 2015.

2 Justice User Group Meeting, 3 October 2015.

3 Section s 464A(3) of the Crimes Act 1958 (Vic), requires police to tell suspects, before any questioning starts, that they do not have to say or do anything and that anything that is said or done may be given in evidence.

4 Consultation with Office of the Public Advocate, 29 July 2016.

5 Office of the Public Advocate, Annual Report 2014-2015.

6 Magdalena McGuire, 'Breaking the Cycle: Using Advocacy-Based Referrals to Assist People with Disabilities in the Criminal Justice System', Office of the Public Advocate, 2012.

7 Ibid. p 7.

would be a need for increased funding for the program, for example to cover the costs of paid volunteer coordinator roles in regional locations that could cover shifts when volunteers were not available. A roster-based service has the potential to satisfy the needs of police, who are often frustrated by the length of time it takes for an ITP to arrive after a call-out, and the needs of people with a disability, whose fear of being alone with police may be eased with the knowledge that there will be an ITP at the station who can be called upon. Building upon a service that is well established and that harnesses community resources makes sense, and has the potential to significantly improve the level of support available to people with an ABI and complex needs in contact with the criminal justice system.

RECOMMENDATION 12

THAT VICTORIA POLICE REQUIRE MEMBERS TO NOTIFY ALL PEOPLE WHO IT SEEKS TO INTERVIEW ABOUT THE AVAILABILITY OF THE INDEPENDENT THIRD PERSON. ONE WAY OF DOING THIS MIGHT BE THE PROVISION OF AN EASY ENGLISH FLYER, TO BE PROVIDED TO SUSPECTS AND WITNESSES, AS WELL AS TO GUIDE VERBAL COMMUNICATION REGARDING THE ITP.

See [Appendix 4](#) for a sample document tested with the Justice User Group.

RECOMMENDATION 13

THAT A REVIEW BE CONDUCTED INTO THE STRUCTURE AND RESOURCING NEEDS OF THE INDEPENDENT THIRD PERSON PROGRAM, CURRENTLY DELIVERED BY THE OFFICE OF THE PUBLIC ADVOCATE, ENABLING THE PROGRAM TO BE STRENGTHENED AND FUNDED TO MEET GROWING DEMAND, AND SO THAT PEOPLE CAN CONFIDENTLY REQUEST THE PRESENCE OF AN ITP WITHOUT FEAR OF SIGNIFICANTLY LENGTHENING THEIR TIME SPENT IN POLICE CUSTODY.

COURTS AND LAWYERS

Recognition requires well informed lawyers and court staff

Being incarcerated increases the likelihood of future offending.¹ For people with an ABI, being incarcerated also increases the likelihood that they will experience greater exposure to abuse, violence, seclusion and more barriers to accessing to parole. Courts are the gateway to incarceration for people with an ABI, whether they sentence a person to imprisonment or remand them in custody. It is therefore imperative that lawyers and people who work within the courts have the capacity to identify all relevant personal circumstances, including any disability that might mean imprisonment or remand is not an appropriate outcome.

“I get legal aid and I think they do marvellous work...the way they treat you with respect is very good and it makes you feel at ease and your life story answers their questions...so when they face up to the judge they can say ‘this guy tries’.”²

Lawyers are integral to communicating a client’s circumstances—including disability—to the court. The consequences of failing to recognise when a person has an ABI can have lasting consequences for that person and their trajectory through the criminal justice system. These consequences range from being ineligible to access a solution-focused court list, to losing the chance for their ABI to be considered in sentencing³ and having their disability communicated to other parts of the criminal justice system. Lawyers are a critical link in the system and must be skilled in identifying the risk factors and the behaviours associated with an ABI.

Most participants felt that it was not a lack of skills or training that impacted lawyers’ capacity to identify and respond to their support needs, rather a lack of time. None of the participants talked about their lawyers being ignorant in relation to ABI or other cognitive or mental health issues in the way that they spoke of this in relation to police and corrections staff. None of the participants spoke about lawyers using difficult to comprehend or jargon-filled language, as they did in relation to the judiciary. Several participants talked about their lawyers being the only person who spoke in a way that they could understand.

“I feel like my solicitor comes down and explains it to me while they’re talking in their jargon... it’s pretty easy to communicate with my lawyer.”⁴

For this reason, although ensuring lawyers have the appropriate skills and training to understand the impact of ABI and other types of disability upon their clients is incredibly important, the focus is

- 1 Weatherburn, Don (2010). The Effect of Prison on Adult Re-Offending. Crime and Justice Bulletin (New South Wales, Bureau of Crime, Statistics, and Research) Number 143. Lulham, Rohan, Don Weatherburn, and Lorana Bartels (2009). The Recidivism of Offenders Given Suspended Sentences: A Comparison with Full-Time Imprisonment. Crime and Justice Bulletin, Number 136.
- 2 Participant interview dated 2 June 2015.
- 3 The Sentencing Act 1991 (Vic) enables a judicial officer to take into consideration the impact that a custodial sentence will have on a person, which may include how a disability might mean that a custodial sentence has a greater impact on the person.
- 4 Participant interview dated 28 May 2015.

on the areas of concern raised emphatically by project participants. The majority of participants described being represented by Victoria Legal Aid (VLA) lawyers or private lawyers acting for them under a grant of legal assistance. While many participants were complimentary of the work of VLA, others felt that their lawyers were often hurried and unable to spare the time that was needed to gather satisfactory instructions and explain any orders that had been made after a hearing. With this in mind, VLA should review the way that it delivers services, particularly its duty lawyer services, upon which people with an ABI and complex needs most heavily depend. Any review and redesign of these services should be user-centred, and should include consultation with a broad range of people who use VLA's services, including people with an ABI.

RECOMMENDATION 14

THAT VICTORIA LEGAL AID CONTINUE WITH ITS EFFORTS TO REVIEW AND REDESIGN THE DELIVERY OF ITS CRIMINAL LAW SERVICES (STARTING WITH ITS DUTY LAWYER SERVICES) USING A HUMAN-CENTRED APPROACH, THAT ENGAGES PEOPLE WITH A BROAD RANGE OF NEEDS, INCLUDING PEOPLE WITH AN ABI. ANY SUCH DESIGN SHOULD CONSIDER:

- the extent to which further skills training is required for VLA lawyers, but also how services can be structured to ensure clients have adequate time to speak with a lawyer, in an appropriate manner and environment, about their case and their personal circumstances; and
- how other professionals such as social workers might be included in the model of service provision to help support and better communicate with clients who experience complex needs.

RECOMMENDATION 15

THAT THE VICTORIAN GOVERNMENT ENHANCE THE FUNDING IT PROVIDES TO VICTORIA LEGAL AID, SO THAT IT CAN REDUCE THE DEMANDS ON LAWYERS (ESPECIALLY DUTY LAWYERS), ENABLING THEM TO SPEND SUFFICIENT TIME WITH CLIENTS, TO IDENTIFY RELEVANT PERSONAL CIRCUMSTANCES, INCLUDING ABI.

Respect requires fair, consistent and solution-focused Courts

Going to court can be a terrifying experience for anyone. For the uninitiated, courts are intimidating and confusing places where language and procedure disorientate and intimidate all but those trained in the law. While ideas of justice and ways of achieving it have evolved, the adherence to convention and procedure can give most mainstream courts the impression of being frozen in a bygone era. For people with an ABI, courts can be even more frightening and disenfranchising. Participants told us that having an ABI creates additional comprehension barriers and, if they had received a prison sentence before, many entered the court feeling that “every time you do something wrong, you go to prison”.

When people cannot understand what is occurring during a court process, or feel that the process is designed to involve them in a meaningful way, the capacity for the system to deliver fair and effective justice is compromised. As a participant explained:

“I just wanted to get it over and done with. Every time. I just wanted to get it over and done with. I never really listened to them that much, I think because they were talking words I wasn’t understanding or relating to. A lot of the time it used to be words that went past me, that’s why I think I didn’t really listen because they weren’t talking to me and knowing that I was understanding?”¹

Procedural justice theory suggests that if people feel they have been treated fairly and respectfully, they are more likely to comply with the law and regard it as legitimate.² Research has linked the style used in solution-focused courts, which adopt procedural justice principles, to success in reducing re-offending. In the words of a member of the Justice User Group who had been a former participant in the Assessment and Referral Court List:

“The way the judge was [in the ARC list], he respected me, so I respected him too, I gave him the same respect back.”³

Solution-focused courts are a product of the idea that a court interaction can and should be a positive intervention in a person’s life, particularly through the expression of care and compassion for a person’s situation by judicial officers.⁴ While procedural justice is an important element of solution-focused courts, these courts also employ a range of

- 1 Participant interview dated 7 June 2016.
- 2 See, e.g., Tyler, T.R. 1990. *Why People Obey the Law*. Yale University Press New Haven: London; Frazer, M.S. 2006. *The Impact of the Community Court Model on Defendant Perceptions of Fairness: A Case Study at the Red Hook Community Justice Center*. New York, NY: Center for Court Innovation; Papachristos, Andrew V., Tracey Meares, and Jeffrey Fagan. 2007. “Attention Felons: Evaluating Project Safe Neighborhoods in Chicago,” *Journal of Empirical Legal Studies*.
- 3 Participant interview dated 27 April 2016.
- 4 M. S. King, “Applying Therapeutic Jurisprudence from the Bench: Challenges and Opportunities” (2003) 28 *Alternative Law Journal* 172, 175.

therapeutic measures aimed at supporting a person to address factors in their life which contribute to their offending behaviour.

A number of solution-focused courts or lists have been introduced into Victoria over the past decade in recognition of the fact that mainstream courts are unable to meet the needs of many people. These courts and their associated programs target people who have additional support needs or underlying issues that compromise their rehabilitation. Despite research demonstrating that these programs deliver additional benefits, they still exist at the fringes rather than the mainstream.¹

In Victoria, the work of solution-focused² courts offer a range of opportunities for intervention before, between, and after imposing sentences. Most relevant to people with an ABI is the Assessment and Referral Court (ARC), a list run out of the Melbourne Magistrates' Court for people with mental illness and/or cognitive impairments. Despite its success (it boasts high retention rates and reduced recidivism rates of its clients³), the ARC List remains limited to one location and is not accessible to offenders in suburban, regional or rural areas, where support for mental illness, ABI and drug and alcohol disorders is often limited.⁴ Through the provision of clinical assessment, support and referral services, in addition to regular monitoring from the same Magistrate, the ARC currently fills a substantial gap in the disability service landscape—especially for people with an ABI—who have interactions with the criminal justice system. Expansion of the Drug Court to other locations⁵ is currently underway, and in its 2017/18 budget, the Victorian Government made a commitment to expand the ARC list to one further location. For participants who had experienced a solution-focused court, the relationship with the Magistrate and the support provided by the clinical team was unlike anything else they could access in the community:

“[Y]ou feel like someone is helping you and you're pretty much given a mentor that checks up on you and you have appointments with. They do little things to make sure that you're fine. They'll find out 'Is your housing alright?' What other things that you might have problems with, that they might be able to help to get you in a lifestyle where you might not do crime or just get you to the point where you can go to court properly.”⁶

When it comes to sentencing, judges in mainstream courts may often feel that their only choices are between Community Corrections Orders (CCOs) and imprisonment. However, solution-focused courts expand the range of options available, particularly after the individual has demonstrated completion of an individual support plan. Solution-focused courts received significant support from the stakeholders consulted during this project, many of whom expressed strong views that

1 For example, the Assessment and Referral Court in Victoria is limited to one location – the Melbourne Magistrates Court; the Neighbourhood Justice Centre is limited to one location and only accessible by people who live, work or study in the City of Yarra, although at the time of writing there were indications that the ARC was to expand and the Drug Court of Victoria had recently expanded from a geographic catchment limited to Dandenong to include greater Melbourne.

2 See Jelena Popovic 'Solution focused justice in the time of law and order' in Rosemary Sheehan and James Ogloff (eds) Working Within the Forensic Paradigm: cross discipline approaches for policy and practice 2015, Routledge, 98-112. Also see Michael S King, The Solution-Focused Judging Bench Book 2009, the Australasian Institute of Judicial Administration, Melbourne, Victoria. See also Pauline Spencer, 'From alternative to the new normal: therapeutic jurisprudence in the mainstream' (2014) *Alternative Law Journal* no 39, 22.

3 Brianna Chesser, 'Assessment and Referral Court List program in the Magistrates Court of Victoria: An Australian study of recidivism' *International Journal of Law Crime and Justice*, Volume 45 January 2016, pp141-145.

4 Alana Schetzer, Call to end 'postcode injustice' in court system', *The Age*, 21 May 2016.

5 Safer Courts And More Efficient Justice For Victorians, Attorney General media release 27 April 2016.

6 Participant interview dated 7 June 2016.

they should be expanded across Victoria.¹ The Justice User Group felt particularly strongly that if more people with an ABI had access to an ARC-style court and specialized case management support, they could remain in the community without compromising community safety.

RECOMMENDATION 16

THAT SOLUTION-FOCUSED COURTS, IN PARTICULAR THE ARC MODEL, BE EXPANDED TO ALL COURTS IN VICTORIA. UNTIL THIS IS POSSIBLE, AT EVERY COURT, INTRODUCE THE TWO KEY ELEMENTS OF SOLUTION-FOCUSED COURTS: JUDICIAL MONITORING (VIA THE USE OF PART HEARD LISTS, INFORMAL SEATING ARRANGEMENTS) AND CISP SUPPORT, AND THAT GOVERNMENT SEEK TO APPOINT JUDICIAL OFFICERS AND MAGISTRATES WHO DEMONSTRATE A COMMITMENT TO THERAPEUTIC JUSTICE.

Respect and fairness can be achieved in mainstream courts

Research has also found that the judge or magistrate plays the most important role in fostering the elements of procedural justice,² reinforcing the need for judges or magistrates to be committed to delivering procedural justice in their courts.

Courts could also, in combination with the implementation of recommendations in relation to improved procedural justice, emulate aspects of the solution-focused lists at locations where a complete service is not possible. This could be achieved through the use of 'part-heard' lists (meaning that a person has a consistent magistrate), CISP and the CISP Remand Outreach Pilot, Forensicare and Koori Liaison Officers, specialized clinicians and the sentencing tools including bail, deferral of sentence, judicial monitoring, Community Corrections Orders, and dismissal. While this option is unlikely to be able to achieve all the benefits of a fully functioning solution-focused court, it would provide consistency of magistrate (a factor identified by participants as important in building a sense of understanding and respect between the person and the court) and eliminate the current 'postcode injustice' experienced by people with disability and other needs living in areas where no solution-focused courts are available.³

One measure of the ARC List's success is seen to be its ability to reflect the values and principles of procedural justice.⁴ Making sure that parties feel that they have been treated respectfully is an especially important feature of this and, like many changes that could be made to court culture and procedures, costs nothing.⁵ Resources aimed at improving the skills of judges to deliver procedural justice in their court developed in recent years⁵ provide strategies that can be used to

1 For example, Submission of Victoria Legal Aid to the Enabling Justice Project Consultation Paper, August 2016.

2 Abuwala and Farole 2008; Frazer 2006; Lee et al. 2013; Marlowe et al. 2003.

3 Currently, solution-focused courts are only accessible at the following locations: ARC – Melbourne Magistrates' Court; Drug Court – Dandenong Magistrates' Court, Melbourne Magistrates' Court.

4 See Chesser 2015 and Wales, H., Hiday, V., Ray, B., Procedural justice and the mental health court judge's role in reducing recidivism' *International Journal of Law and Psychiatry* (2010) Volume 33 No 4, 265-271.

5 See Pauline Spencer, 'From alternative to the new normal: therapeutic jurisprudence in the mainstream' (2014) *Alternative Law Journal* no 39, 22.

6 See Centre for Court Innovation's Procedural Justice: Practical Tips for Courts; In 2016 in Victoria, the Judicial College launched the Disability Bench Book which contains information for Magistrates and judges about working with people with disabilities and how to adopt communication strategies that enables people with a disability to participate in the process.

promote perceptions of fairness.¹ Each strategy seems informed by, in the most part, common sense; the magistrate introducing themselves; explaining the court process and how decisions are made; explaining the reason for any delays; announcing the order in which matters will be heard; using plain language; using open ended questions. Yet these simple things are so often absent in the court room. Some of these measures have been adopted—as a result of personal choice or interest rather than requirement—by Victorian magistrates and judges. Participants who had encountered those magistrates or judges spoke of an entirely different experience, with one participant saying:

“[S]he took a lot of time to see how you were going and what was happening in your life and why you were in jail. And I think, because I was on heroin at the time, she actually got me off heroin. She...inspired me to get off heroin... She could’ve just closed her book on me.”²

A person’s experience of court, however, is not limited to what happens in the court room. Therefore, to have the desired impact, a commitment to delivering procedural justice must underpin the practices of every person who works in the court; from the security personnel on entry, to the registry staff, to prosecutors and lawyers and to judges. This is the approach taken by the Red Hook Community Center in the US, a solution-focused, community-based court that boasts excellent outcomes including low recidivism rates.³

Judge Alex Calabrese attributes much of Red Hook’s success to a culture of respect that ensures ‘a person is treated with respect throughout the building’.⁴

If, in addition to solution-focused courts, mainstream courts could improve their delivery of procedural justice, people who come before them—including those with an ABI—may be more inclined to engage with the process, to use the interaction to access the help that they need and ultimately, to comply with the directions they receive. Improving the experience of court for all people is consistent with the commitment made by the Victorian Government in its recently released State Disability Plan,⁵ which recognises that universal design—making built environments, facilities, information, policies, products, programs and services accessible for all people and abilities—is good for us all.

1 Emily Gold LaGratta, ‘Procedural Justice: Practical tips for Courts’, Center for Court Innovation, October 2015.

2 Participant interview dated 7 June 2016.

3 Evaluation of Red Hook Community Center found that people who attend Red Hook are 15 times less likely to be imprisoned than if they attended a mainstream court. The Centre has also been found to deliver \$6.8 million in savings to the County each year. Source: Speech by Judge Alex Calabrese delivered at RMIT University’s Graduate School of Business and Law, 11 March 2017.

4 Alex Calabrese, Presentation to the Graduate School of Business and Law, RMIT, Melbourne, 9 March 2017.

5 State Disability Plan, p 18.

RECOMMENDATION 17

THAT THE DEPARTMENT OF JUSTICE AND REGULATION MAKE TRAINING AVAILABLE TO ALL STAFF (INCLUDING JUDGES AND MAGISTRATES) EMPLOYED AT MAGISTRATES AND COUNTY COURTS AROUND PROCEDURAL JUSTICE AND HOW TO IMPLEMENT PROCEDURAL JUSTICE INTO COURT PRACTICES.

Justice Plans would provide appropriate support to people with an ABI

Our sentencing laws have long-recognised that certain circumstances, including mental illness and cognitive impairment, can impact a person’s decision-making capacity and thereby reduce their moral culpability in relation to the commission of a criminal offence. However, these laws fail to extend the same level of flexible sentencing options to people with an ABI as they do to people with an intellectual disability or mental illness.¹ Firstly, the dearth of suitable supported accommodation for people with an ABI means that other, less restrictive sentencing options are often deemed unsuitable. Secondly, a person with an ABI is unlikely to qualify for a Custodial Supervision Order (where a person is found not guilty by reason of mental impairment) as their application is confined to people with mental illness and intellectual disability. Thirdly, a person with an ABI is not eligible to receive the flexible sentencing option of a Justice Plan; a detailed and individually tailored plan for support and specialist intervention. Section 80 of the Sentencing Act 1991 Victoria provides that a sentencing court may impose a Justice Plan on an offender with intellectual disability.

A Justice Plan:

- Is a sentencing option available to an offender in Victoria with an intellectual disability;
- can be imposed, for a period of up to two years, in combination with an undertaking from the offender to be of good behaviour (often referred to as a ‘good behaviour bond’);
- can also be attached as a condition of a Community Corrections Order, in which the offender might also be required to do unpaid community work, as well as address underlying factors in their offending;
- is developed with the support of the Department of Health and Human Services who provide a ‘plan of available services’ to address their housing and support needs² and other crucial information about how the person is impacted by their intellectual disability;

1 Victoria Legal Aid’s response to the Enabling Justice Project Consultation Paper issued by the Centre for Innovative Justice, August 2016.

2 Criminal Justice Practice Manual, Disability Services, Department of Human Services, September 2007, pp 34-36.

- involves the allocation of a specialist case manager to support the offender to manage their commitments and coordinate access to services.

Although ABI is distinct from intellectual disability, several of the cognitive difficulties faced by people with an ABI are comparable.¹ This makes it neither fair nor logical that sentencing courts are not able to formulate a sentence incorporating a Justice Plan for offenders with an ABI. While a Justice Plan would not be appropriate for all offenders with an ABI (just as they are not always appropriate for all offenders with an intellectual disability), the fact that Justice Plans are not available for people with an ABI, given their over-representation in the criminal justice system, appears to be arbitrary. The discrepancy is based on a view—that people with an ABI were not over-represented in the criminal justice system—that prevailed at the time when the Disability Act, which provided for the special sentencing options for people with an intellectual disability, was passed.²

Expanding the use of Justice Plans to offenders with an ABI would come at a cost, and the Department of Health and Human Services would need to employ adequate numbers of Disability Justice case managers specifically trained to respond to the needs of people with an ABI to take on the extra load of offenders. There could also be increased demand placed upon Victoria Legal Aid to fund neuropsychological reports establishing eligibility. When compared to the cost of imprisoning this group, especially those whose offending is low level, the expanded use of Justice Plans may very well represent a cost saving. It would also be also fairer; reducing the discrepancies in the available response based on the kind of cognitive impairment a person has and acknowledging the growing body of evidence about the over-representation of people with an ABI in the criminal justice system.

The Justice User Group, as well as most stakeholders consulted, felt very strongly that Justice Plans should be available to people with an ABI and were confident that they would receive more appropriate support from Disability Services than Community Corrections.

RECOMMENDATION 18

THAT SECTION 80 OF THE SENTENCING ACT 1991 (VIC) BE AMENDED TO MAKE JUSTICE PLANS, AND THE NECESSARY SUPPORT FROM DEPARTMENT OF HEALTH AND HUMAN SERVICES, AVAILABLE AS A SENTENCING OPTION TO PEOPLE WITH AN ABI, IN ADDITION TO PEOPLE WITH AN INTELLECTUAL DISABILITY.

1 See Recommendation 46 and discussion at page 336-337 of the Victorian Parliamentary Law Reform Committee, Inquiry into Access to and Interaction with the Justice System by People with an Intellectual Disability and their Families and Carers, March 2013.

2 Victoria Legal Aid's response to the Enabling Justice Project Consultation Paper issued by the Centre for Innovative Justice, August 2016: 'In the second reading speech before the Disability Act was passed, the question of whether special sentencing options should be expanded to those with an ABI, not just intellectual disability, was raised. The then Minister for Community Services contended that there was little evidence regarding the involvement of people with an ABI in the criminal justice system and questioned whether more appropriate treatment modes were available'.

CORRECTIONS

EXPERIENCES SHARED BY PROJECT PARTICIPANTS INDICATES THAT THE RESPONSIVENESS OF CORRECTIONS VICTORIA TO THE NEEDS OF PEOPLE WITH AN ABI REQUIRES GREAT ATTENTION.

An informed, skilled Corrections workforce is the key to a corrections system that recognises, respects and supports people with an ABI.

Corrections Victoria employees – both custodial officers and community corrections officers – should be required to adopt the mindset that a person, even one suspected or convicted of crimes, must be treated with respect and provided with the support to enable their full participation in both the criminal justice process and their own rehabilitation and reintegration to the community. This requires an understanding of the ways that a disability might hinder someone's capacity to participate in the system, along with a commitment to their treatment and rehabilitation.

Additionally, as the stories of project participants demonstrate, most people in prison, particularly those with an ABI, have experienced trauma before they enter, often as children. Many also experience trauma whilst inside. We know that trauma impacts the brain and can affect the ways in which people respond to situations, particularly where they feel threatened or intimidated.¹ Trauma informed care and practice is a framework which has been developed to assist people working with those who have experienced trauma.² Despite these known factors, custodial and community corrections officers receive limited training around identifying and working with people with an ABI and trauma informed practice.

Given that thousands of offenders with an ABI go in and out of prison, and on and off Community Corrections Orders, with disability undetected and undisclosed, a response which only addresses offenders with known disability will always be insufficient to reach all people with an ABI in contact with Corrections Victoria. Instead, other hallmarks of complex needs, such as chaotic lifestyle, drug and alcohol use and homelessness, or difficulty completing Community Corrections Orders should trigger an attitude of caution.

Corrections Victoria staff who have contact with offenders should be encouraged away from the view that they are in the business of punishment or monitoring compliance and towards the view that they are in the business of rehabilitation. This begins with attracting the right people to the job, training them appropriately and reinforcing the requirement for respectful treatment through a range of measures that support changing staff culture and practices, as well as mechanisms like performance indicators and benchmarks relating to rehabilitation, reduced recidivism rates and 'client' satisfaction.

1 Delima, J., & Vimpani, G. (2011). The neurobiological effects of childhood maltreatment: An often overlooked narrative related to the long-term effects of early childhood trauma? *Family Matters*, 89, 42-52.

2 Harris M, Fallot R. D. Using trauma theory to design service systems. San Francisco, CA: Jossey-Bass; 2001

While the drivers of recidivism are complex, and people are ultimately responsible for offences they commit, setting a culture of responsibility for rehabilitation at the top of Corrections Victoria is likely to influence the outcomes that are sought after and rewarded at the coalface. A system which embeds this culture will help to reassure the community that we imprison only those people who need to be in prison, and that when we do, they are provided with the support they need to participate in their rehabilitation. To borrow words from the director-general of Sweden's prison and probation service, Nils Oberg:

“Our role is not to punish. The punishment is the prison sentence: they have been deprived of their freedom. The punishment is that they are with us.”

For this to be possible, the minimum qualifications¹ that a person must hold to become a custodial officer or community corrections officer must be reviewed and enhanced to reflect the demands of these positions. In jurisdictions which enjoy far lower recidivism rates, the inherent complexity of similar roles is reflected in position descriptions and the education or experience expected of applicants.² When asked, participants told us that “having those people (with) certificates and diplomas in community services” working as community corrections officers or custodial officers would make a big difference to the support available. As one participant said:

“[T]he screws or the security officers or whatever called, they’ve got to do some learning and understanding about all their...clients I suppose, all these prisoners. It would be good if they had some sort of training and background about community services about trauma and about other stuff, mental illness, instead of wielding a baton they’d be more understanding if they had these degrees, rather than coming out of a gym out of Brunswick...”³

RECOMMENDATION 19

THAT CORRECTIONS VICTORIA INTRODUCE MANDATORY TRAUMA-INFORMED PRACTICE TRAINING AND FOR ALL CUSTODIAL OFFICERS AND COMMUNITY CORRECTIONS OFFICERS AS WELL AS TRAINING AROUND RECOGNISING AND RESPONDING TO PEOPLE WITH AN ABI.

- 1 Currently, in Victoria, a person without qualifications or prior experience can apply to become a custodial officer. Any person can submit an online application and provided they are assessed as having acceptable skills, behaviours and qualifications (assessed during a one day group exercise followed by an interview), they will be made an offer. Prior to commencing, the person must undergo 42 days of training, of which two weeks is on the job.
- 2 For example, in New Zealand, in addition to prison officers, each offender is appointed a non-custodial case manager (desirably with tertiary qualifications or backgrounds in social work and knowledge of with Maori or Pacific Island culture) who is responsible for assisting the person to establish connections and supports within the community and, ultimately, reduce the likelihood of them reoffending.
- 3 Participant interview 9 May 2016.

RECOMMENDATION 20

THAT CORRECTIONS VICTORIA PROMOTE A STRONG CULTURE OF COMMITMENT TO REHABILITATION WITHIN ITS WORKFORCE BY REVIEWING ENTRY AND TRAINING REQUIREMENTS FOR ALL STAFF.

People with an ABI and complex needs would access the support of prison case managers if they were non-custodial staff

Custodial officers work with a complex, high needs group of people during a stressful period in their lives. In Victoria, custodial officers also perform the role of case managers¹ making them responsible for supporting prisoners allocated to their care to meet the requirements and goals of their local plan.² As identified by the Ombudsman in her 2015 report,³ the case management ratios combined with the rate of turnover means that case managers struggle to develop relationships with the prisoners assigned to them. Participants were critical of the level of support they received from case managers, some affirming the Ombudsman's findings that prisoners often did not know who their case managers were.⁴ The consequences of inadequate case management support can be significant, including not being able to access adequate pre-release support, losing the opportunity to preserve public housing tenancies, being unable to engage with critical family violence support services prior to release and being unable to apply for parole.

Despite a comprehensive Offender Management Framework⁵ that identifies the need for case managers to be trained and skilled to effect behaviour change, the level of support and services made available is dependent on the prisoner's level of risk (as opposed to their need).⁶ Even still, the experiences of participants indicate that, in reality, the support provided falls well short of the expectations documented in the Offender Management Framework.

Participants felt that even if the skills, training and culture of the workforce in Victorian prisons were to dramatically shift, the support role of a case manager would always be eclipsed by their security and risk management obligations as a prison officer. In New Zealand, the introduction of a non-custodial case management team for offenders serving sentences of less than two years was part of a suite of approaches adopted to help them achieve their target of a 25 percent reduction in recidivism. The model has proven to be successful in New Zealand, with the Corrections Department announcing a ten percent reduction in recidivism only twelve months after the new model was adopted.⁷ The non-custodial team provides an environment where offenders are more open to genuine participation and communication, rather than feeling, as one participant put it, that

“[I]t’s a con. It’s all a game.”⁸

- 1 Corrections Victoria, Offender Management Framework: Achieving the Balance, August 2016.
- 2 Department of Justice, Corrections Victoria, Correctional Management Standards for Men's Prisons in Victoria, July 2014.
- 3 Victorian Ombudsman, Investigation into the rehabilitation and reintegration of prisoners in Victoria, September 2015, at pp 44-45.
- 4 Victorian Ombudsman, Investigation into the rehabilitation and reintegration of prisoners in Victoria, September 2015, at pp 44-45.
- 5 Corrections Victoria, Offender Management Framework: Achieving the Balance, August 2016
- 6 For example, under this Framework, a person serving a term of imprisonment for drug related offences who has an ABI, has a drug addiction and is homeless is likely to qualify for less support than a person who has no disability, has secure housing in the community and is serving a term of imprisonment for murder.
- 7 Two years from the introduction of this model, and a range of other measures, the recidivism rate in New Zealand has reduced by 10%, New Zealand Office of the Auditor-General, Department of Corrections: Managing offenders to reduce reoffending, Wellington, 2013.
- 8 Participant interview dated 22 April 2015.

In response to the Ombudsman's Report, Corrections Victoria expressed an interest in investigating New Zealand's approach of using non-custodial officers as case managers as a possible model to be used at Marngoneet Prison,¹ although no progress has been observed in this regard.² The introduction of a non-custodial case management team, particularly for those with an ABI or complex needs, similar to the New Zealand model, might be one way of reducing the recidivism rates in this cohort. A non-custodial case management team, alongside a team of specialised ABI and mental health clinicians, could also provide support and clinical advice to community correctional officers who are supervising offenders with an ABI and complex needs. Of course, the success of such a model would depend on the implementation of other recommendations which would improve the recognition of people with an ABI in prisons and across the criminal justice system.

This recommendation was developed by the Enabling Justice project partners in response to consistent feedback from project participants and the Justice User Group that the current case management model failed to meet their needs. The group was supportive of this idea, with one participant saying:

“You’ve got to have a case manager otherwise you’ve got nothing.”³

RECOMMENDATION 21

THAT CORRECTIONS VICTORIA INTRODUCE A NON-CUSTODIAL CASE MANAGEMENT TEAM TO WORK WITH PRISONERS (OR AT LEAST TO WORK WITH PRISONERS WHO ARE IDENTIFIED AS HAVING AN ABI, MENTAL ILLNESS OR COMPLEX NEEDS) TO SUPPORT THEM IN THE PRISON ENVIRONMENT AND REDUCE THEIR LIKELIHOOD OF RE-OFFENDING.

A culture of respect, inquiry and support at Community Correctional Services

“It doesn’t matter what we say to them, or how we say it, they’re going to treat us the way they wanna treat us.”⁴

People with an ABI are twice as likely to breach family violence intervention orders as those without an ABI,⁵ causing them to face breaching offences or ‘offences against justice’ at much greater rates than people without cognitive impairment.⁶ Consistent with these statistics are the experiences of project participants, who told numerous stories of how behaviours attributable to their ABI, such as poor short-term memory, caused them to breach Community

- 1 Victorian Ombudsman's Report on Recommendations, June 2016, p 29.
- 2 Comments of Deputy Corrections Commissioner Rod Wise at the Remaking Justice Forum, 25 August 2016, Wheeler Centre, Melbourne.
- 3 Justice User Group meeting, 8 December 2016.
- 4 Justice User Group meeting 3 October 2015.
- 5 Sam Bytheway, 'Characteristics of respondents charged with breach of family violence intervention orders', Legal Aid Research Brief, November 2015.
- 6 E Baldry, L Dowse & M Clarence. 2011. People with Mental Health and Cognitive Disability: Pathways into and out of the criminal justice system. Background Paper for the National Legal Aid Conference, Darwin.

Corrections Order or parole conditions. Participants told us that support which took account of their disability and needs was a vital requirement for them to have a chance of completing orders in the community. Unfortunately, many participants and stakeholders felt support of this nature was not provided by community corrections officers, some feeling that this was due to the philosophical conflict (rehabilitation versus risk management) inherent in the roles; others feeling it was a combination of unmanageable caseloads, the culture of the organization and the limited skills and experience of the staff in those positions.

People should not be incarcerated for breaching corrections orders because of a failure by the system to recognise their disability. Nor should they be incarcerated because of the way that disability and disadvantage combine. Failure to comply with a Community Corrections Order should be an indicator that more needs to be done to help a person to avoid incarceration. This could occur through breach proceedings being dealt with in a solution-focused court list. Even prior to the matter reaching court, however, Corrections Victoria should ensure that its resources are focused upon supporting successful completion of orders.

With imposition of non-parole periods becoming less common,¹ Community Corrections Orders have the potential to be a particularly important tool in reducing repeat incarceration. While the Corrections Victoria Disability Framework for 2016-2019² outlines a policy of supporting offenders with disability to complete orders, project participants described feeling unsupported while they attempted to complete orders. Some participants, including Claudia, described community corrections officers who asked perfunctory questions from a checklist but were indifferent to their success or failure.

Corrections Victoria has announced the introduction of a new service delivery model in 2017,³ with a specialised case management team comprised of a more highly skilled workforce, no doubt a response to the 2017 VAGO report which found the current practices for managing offenders on Community Corrections Orders to be ineffective.⁴ While, on its face, this appears to be a positive step by Corrections Victoria, specialized officers will continue to be assigned to offenders according to their level of risk—high risk—rather than their level of need.⁵ Therefore, those people with an ABI who continue to commit low level offending, yet have high support needs will not likely benefit from this specialized support.

Community Correctional Services might consider drawing upon the service delivery model of the CISP, which has been evaluated as a highly successful program. The CISP model involves therapeutic interaction between clients and workers rather than a simple referral and advocacy approach. Under the CISP program, the support provided is individualized, with the level of service response (including the allocated workers level of skill) matched to a client's assessed level of risk and need.⁶ It is important that the specialized case managers, like CISP clinicians, view their primary function as being about providing support, rather than supervision, compliance monitoring and reporting breaches. It is in the interests of the whole community that these additional resources assist people to successfully complete Community Corrections Orders.

- 1 See Sentencing Advisory Council, Latest statistics show steady increase in CCO use by the Magistrates' Court, 2 March 2016.
- 2 Corrections Victoria, Disability Framework 2016-2019 – Expanding the Opportunities, November 2015.
- 3 Media Release, Minister for Corrections, 'Stronger Community Corrections System to Keep Victorians Safe', 16 January 2017.
- 4 Victorian Auditor General's Report, Managing Community Corrections Orders, February 2017, 2016-17:15.
- 5 Corrections Victoria Offender Management Plan: Achieving the Balance provides that the risk principle determines who should receive services and what intensity they should receive and the need principle focuses on what should be targeted.
- 6 Dr. Stuart Ross, Melbourne Consulting & Custom Programs, Evaluation of the Court Integrated Services Program: Final Report, December 2009, p 21.

CISP's success (as well as its limitations) can in part be attributed to its access to medium and long term housing places in connection with the Justice Housing Support Program. Access to a broader range of supported housing facilities is a necessary part of any program that works with people with complex needs in contact with the criminal justice system.

The substantial funding increase for Corrections Victoria to enhance its community corrections service was not matched with an increase in resources for services in the community. Without additional housing stock, homelessness support services and other community supports, any support provided by community correctional services will only go so far. Therefore, well-resourced community service and housing and homelessness sectors must be part of any strategy to improve the support provided by the community corrections service.

As participants described, remembering appointments with community corrections officers is challenging enough, let alone complying with the (often many) other conditions of the order:

“[I]f you’ve got an ABI it’s very fucking difficult, to have the patience to sit down, go to appointment after appointment after appointment, not missing, stay patient, not spit the dummy...”¹

Without a workforce that understands how an ABI can impact a person and that can identify approaches that might support a person with an ABI to complete a Community Corrections Order, people with an ABI (including those who breach Community Corrections Orders for reasons relating to their disability rather than serious criminal conduct) will continue to be returned to our courts and prisons at disproportionate rates.² Using a human-centred design approach to understanding the reasons why people with an ABI and complex needs find completing orders so difficult might allow innovative solutions to be found, including through the use of technology.³

RECOMMENDATION 22

THAT CORRECTIONS VICTORIA INTENSIFY THE SUPPORT AVAILABLE TO PEOPLE WHO ARE UNDERTAKING COMMUNITY CORRECTIONS ORDERS AND HAVE A CONFIRMED OR SUSPECTED ABI OR COMPLEX NEEDS. THIS NEEDS-BASED APPROACH MAY INCLUDE ASSIGNING SPECIALIST CASE MANAGERS WITH LOWER CASE-LOADS AND HIGHER ENTRY AND TRAINING REQUIREMENTS TO SUCH CLIENTS, EVEN IF THEY ARE NOT IN AN OFFENCE-BASED HIGH RISK CATEGORY.

1 Participant interview dated 22 April 2-15.

2 Recommendation 4, Victorian Auditor General's Report, Managing Community Corrections Orders, February 2017, 2016-17:15.

3 In 2017, RMIT students undertaking the Fastrack program are working to design an innovative solution to this issue.

Recognition and support of people with an ABI in prison requires access to health care services, including access to ABI diagnostic and support services.

The health needs of prisoners are far greater than the general population. Prisoners experience high levels of mental illness, chronic diseases, disability, injury and poor dental health.¹ Prisoners have a right to receive medical care or treatment that is of an equivalent standard to that provided to people in the general community', a principle stemming from the United Nations Convention on the Rights of Persons with Disabilities (CRPD),² which as a signatory, Australia has legal obligations, at an international level, to provide. The right to medical treatment in the Corrections Act 1986 (Vic) (Corrections Act) is not expressed as strongly as the protection required by the CRPD but nevertheless provides that prisoners have a right to 'reasonable medical treatment the diagnosis of and protection from the further deterioration of any pre-existing conditions'.³ In Victoria, Justice Health has the responsibility for managing the health services delivered in Victorian prisons.⁴ Justice Health contracts a number of private health service providers to deliver these services at one or more prisons or forensic hospitals.

The experiences of project participants indicate that these rights, even those recognised under the Corrections Act, are not being met. Participants told us that medical services in prison are difficult to access and limited in what they can provide, particularly with respect to secondary treatment. Consistently, members of the Justice User Group told us that they believed the standard of care was lower than services provided in the community:

“I don’t even know if they’re real doctors or not but the doctors [there] don’t care about you. They don’t give a shit. It’s hard enough getting an appointment with the doctor and then when you see ‘em they don’t help you.”⁵

Participants reported an inappropriate over-reliance on anti psychotic medication and seclusion, with many expressing a view that these measures were used as a way to manage offenders rather than treat their conditions. The reoccurring experiences of justice users raise concerns that alternative, non-medical approaches, such as counselling, support and a proper understanding of how disability affects behaviour, are not being offered or followed in the prison environment.

A custodial sentence has the potential to be an opportunity to diagnose, treat or improve a person's health issues because they are housed, accessible and the prison environment is theoretically drug and alcohol free. In Sweden, a country with one of the lowest recidivism rates in the world, prison is viewed as an opportunity to treat all the relevant problems that a person faces. A narrow approach

1 Australian Institute of Health and Welfare [AIHW] (2015). The health of Australia's prisoners 2015. AIHW, Canberra; Ogloff, J, Davis, M, Rivers, G, Ross, S, (2007), The identification of mental disorders in the criminal justice system, Trends and Issues in Crime and Criminal Justice, vol. 334, Australian Institute of Criminology, Canberra.

2 Article 25(a) provides that State parties must '[p]rovide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons'.

3 Corrections Act 1986, section 47 (f). Section 47 (g) also provides that an intellectually disabled or mentally ill prisoner has the right to have reasonable access within the prison or, with the Governor's approval outside a prison to such special care and treatment as the medical officer considers necessary or desirable in the circumstances. Arguably, this should be broadened to include people with an ABI.

4 A very general description of the governance of Justice Health is described on the Corrections Victoria website.

5 Participant interview (3) dated 27 April 2016.

which attempts to address a person's offending behaviour without attempting to understand the impacts that other health and social problems may be having, has the potential to undermine any efforts to prevent a person from future offending.

Yet currently, information about individual prisoner health is rarely shared between Justice Health and Corrections Victoria, let alone other services.¹ As a result, the opportunity for the provision of services and continuity of care between the community and prison is lost. Based on the experiences of participants, and stakeholder consultations,² health service providers in prisons do not routinely refer people with a suspected ABI to specialists. Even where a health professional in prison suspects a patient has an ABI, this is unlikely to be communicated to custodial staff or to services in the community (including Disability Services) where it might be confirmed. ABI diagnosis and treatment appears to be viewed as being outside the scope of the services that Justice Health is responsible for delivering. Disability Services will not accept referrals from people in prison with an ABI unless those people are already known to Disability Services.³ Participants felt keenly a sense that, once in prison, they were no longer anyone's priority, with one participant saying:

Yeah, it's really hard to get treatment, you have to be a case on the outside to get it on the inside. They're [case managers] limited to what they can give you as well. We're just a number... They don't want to take us on, take us home.⁴

Under the Corrections Act,⁵ prisoners with an intellectual disability or mental illness have the right to reasonable access within the prison or, with the Governor's approval, outside a prison to such special care and treatment as the medical officer considers necessary or desirable in the circumstances. This should include the right of people with an ABI to access specialists who can diagnose a person's condition, identify the extent of a person's injury, help them to develop skills and strategies to cope with the disability and to line up the appropriate supports in the community in preparation for their release. The loss of the ABI clinician role from the Victorian prison system⁶ (which at 1.0 FTE worker for all Victorian prisons was insufficient to meet demand) is a further barrier to people with an ABI being recognised, adequately supported and given access to appropriate medical treatment.

For Corrections Victoria to achieve the priorities identified in its own Disability Framework, and meet the obligations of the CRPD, it must ensure that people with a disability—including ABI—have access to the same services in prison as they could access in the community. This should include neuropsychologists and other specialists with the capacity to diagnose a person's disability as well as ABI and mental health clinicians to work alongside Justice Health in the identification and support of people suspected to have an ABI and to support custodial officers (and case managers) to develop strategies to work

- 1 Justice Health are subject to the privacy and confidentiality obligations of the Health Records Act 2001 (Vic), however, where written consent is obtained, records can be shared between organisations.
- 2 Consultation with Corrections Victoria (29 July 2016). Consultation with DHHS (15 August 2016).
- 3 Consultation with DHHS (15 August 2016); Consultation with Corrections Victoria. (29 July 2016).
- 4 Participant interview dated 9 May 2016.
- 5 Section 47(g), Corrections Act (Vic). Corrections Victoria previously employed an ABI Clinician who worked across all Victorian prisons but has indicated that it does not intend to replace this position.
- 6 See Corrections Victoria, Disability Framework 2013-2015: Embracing the challenges which describes the ABI clinician role as a successful and substantial program, and significant feature of Corrections Victoria's response to offenders with an ABI, at p 11.

with people with an ABI. The way that health services are delivered into prisons should be reviewed, with a view to expanding the range of health services which a prisoner can access.

The prevalence of people with an ABI in the prison system is sufficient to justify the employment of clinicians in every Victorian prison. Corrections Victoria could investigate partnerships with specialist ABI assessment and case management services in the community to deliver support to people with a diagnosed or suspected ABI and complex needs in prison. For example, the arbias Dame Phyllis Frost Centre Offender Support Program (OSP) Pilot commenced mid-2016 and provides training for prison staff about identifying women in custody with an ABI; neuropsychological assessments; pre and post-release case management support to Aboriginal and Torres Strait Islander (ATSI) women in custody who have a suspected or diagnosed ABI and high complex needs including Mental Health and Alcohol and drug issues¹ and is an example of a positive collaboration between Corrections Victoria and a community-based organisation with specialized knowledge about supporting people with an ABI.

RECOMMENDATION 23

CURRENT JUSTICE HEALTH CONTRACTS SHOULD BE REVIEWED TO ENSURE THAT PRISONERS HAVE EQUAL ACCESS TO A REASONABLE RANGE OF HEALTH SERVICES COMPARABLE TO THOSE AVAILABLE IN THE COMMUNITY, WITH EMPHASIS ON MAKING AVAILABLE TREATMENTS AND THERAPIES OTHER THAN MEDICATION THAT ARE RELEVANT FOR PEOPLE WITH A COGNITIVE DISABILITY AND COMPLEX NEEDS, SUCH AS OCCUPATIONAL THERAPY AND COUNSELLING.

RECOMMENDATION 24

THAT THE VICTORIAN OMBUDSMAN CONDUCT AN INQUIRY INTO THE MANAGEMENT OF PRISONERS WITH MENTAL ILLNESS AND DISABILITY IN VICTORIAN PRISONS AND YOUTH DETENTION FACILITIES, INCLUDING A REVIEW OF WHETHER THERE IS CURRENTLY AN INAPPROPRIATE USE OF PSYCHIATRIC MEDICATION AND OTHER MEASURES SUCH AS SECLUSION.

Throughcare and transitional support must be enhanced.

¹ Arbias Annual Report, 2016, p 6, Consultation with Arbias, November 2016.

The fact that a person is incarcerated should, for most people, be a signal that they are likely to be socially excluded for a variety of reasons. For people with an ABI and complex needs, the social exclusion they experience is greater still as their interaction with the criminal justice system can mean that they are excluded by the community, family and mainstream disability services. Further, the service system is complex, designed around diagnosis and the needs of government and the funded organisations, not the needs of its users.

Social connection and support is a critical component of reducing re-offending. Yet few justice users involved in this project qualified for any significant pre-or post-release support, such as the Reconnect program.¹ Those who had access to post-release support felt that the support available was insufficient to meet their needs, often limited to a worker collecting them from prison and finding them three nights at a hotel after release. While the announcement in the 2017/18 budget that Corrections Victoria will more than double the number of prisoners who will have access to its pre-and post-release support program is to be commended,² it is also suggested that the current programs be reviewed to determine their suitability, particularly for offenders with an ABI and complex needs.

The amended community support model that followed the Harper review³ focused on community safety from high risk offenders and reclassified the way in which prisoners qualified for transitional support programs. Only those offenders who were classified as high risk—serious violent offenders or sex offenders—are now able to access these support programs. While this approach can be understood in the wake of a series of offences committed by parolees, it also means that people with complex needs are more likely to enter into a cycle of offending; where the offending is serious enough to warrant a prison sentence, but not serious enough for the person to receive the necessary support to manage in the community upon release. Participants told us that if support was not available prior to and at the point of release, the opportunity was lost, and they had returned to their lives of homelessness, drug and alcohol use and, eventually, crime or breaches of their parole.

The now-defunct role of the ABI clinician in the Victorian prison system (described above) was able to provide a link between relevant individuals and the supports that existed in the community. It was also able to raise awareness among correctional staff, in turn promoting referral of clients to the service. The ABI Clinician role—or something akin to it—was considered by many stakeholders to be a crucial missing element in the support fabric for people with an ABI in prison. While Corrections Victoria maintains that the functions have been spread across senior prison officer responsibilities, it is doubtful whether those officers have the qualifications, skills, knowledge or connections to the community that such a role requires. Establishing a team of ABI clinicians or case managers, ideally in partnership with a community support provider, has the capacity to ensure that people with an ABI in prison are identified, assessed, supported and,

1 The Reconnect program is the only Corrections-funded post release support program provided to qualifying Victorian prisoners, through contracted community-based organisations, including Jesuit Social Services. Reconnect generally provides up to 4 weeks (targeted) of support post-release, although can be up to 12 months (intensive) for particularly high risk prisoners: CV Offender Management Plan.

2 Corrections Victoria Stakeholder Forum, 1 June 2017.

3 Harper, D, Mullen, P, McSherry, B, Complex Adult Victim Sex Offender Management Review Panel, Advice on the legislative and governance models under the Serious Sex Offenders (Detention and Supervision) Act 2009 (Vic), November 2015.

ultimately, released into the community with the necessary supports in place.

Corrections Victoria has role to play in relation to the National Disability Insurance Scheme (NDIS) in two respects: firstly, Corrections Victoria will be required to provide support to NDIS approved participants who pass into the custody of Corrections Victoria.¹ Secondly, people in prison with a disability will require support to apply for an NDIS support prior to their release. Both are good reasons to revisit the value of a linking role such as the ABI clinician within the Victorian criminal justice system, and consider the potential for its expansion.

RECOMMENDATION 25

THAT CORRECTIONS VICTORIA INTRODUCE A TEAM OF ABI CLINICIANS—THROUGH PARTNERSHIP WITH COMMUNITY BASED HEALTH ORGANISATIONS—TO DELIVER ASSESSMENT SERVICES AND SUPPORT TO PEOPLE IN VICTORIAN PRISONS WHO HAVE, OR ARE SUSPECTED OF HAVING, AN ABI.

RECOMMENDATION 26

THAT ALL PEOPLE WITH AN ABI AND/OR COMPLEX NEEDS QUALIFY FOR PRE-AND POST-RELEASE PLANNING AND SUPPORT, REGARDLESS OF THEIR RISK RATING OR OFFENDING PROFILE AND THAT THE CURRENT PRE-AND POST-RELEASE PROGRAMS BE REVIEWED TO DETERMINE THEIR SUITABILITY FOR PEOPLE WITH AN ABI/COMPLEX NEEDS.

1 NDIS Guiding Principles. Enabling prisoners to be connected to the NDIS is also recognised as a priority in the Corrections Victoria Disability Framework 2016-2019.

RECOMMENDATION 27

PEOPLE WHO ARE IN PRISON SHOULD BE ABLE TO APPLY FOR, ACCESS AND CONTINUE TO RECEIVE THEIR NDIS SUPPORT PACKAGE WHILE IN PRISON ON AN EQUAL BASIS WITH PEOPLE WHO ARE NOT IN PRISON, MAKING USE OF ALL REGISTERED NDIS SERVICE PROVIDERS THAT WORK WITH PEOPLE IN PRISON. NDIS APPLICATIONS AND PACKAGE PLANNING SHOULD BE FULLY INTEGRATED INTO POST RELEASE PLANNING AND SUPPORT.

Respect is demonstrated through greater accountability and transparency of Corrections Victoria

There is significant public interest in whether the approaches undertaken by Corrections Victoria are having an impact, especially from a community safety perspective. Information that tracks the performance of Corrections Victoria based on the rehabilitation, health and social outcomes of offenders serving sentences in the community or in prison should be readily available, but is not. While some broad information about recidivism rates per prison is available,¹ insufficient detail is provided to know whether Corrections Victoria is operating consistently with its own policies and frameworks. Information about what occurs in prisons is particularly difficult to access. For example, there is no information publicly available about the number of people with disabilities in each prison, and the type of support being provided. Last year, Corrections Victoria released its Disability Framework 2016-2019,² that prioritises enhancing support for people with a disability within the Corrections system, developing the capacity of the Corrections workforce to be able to work with offenders with a disability, supporting offenders with a disability to complete Community Corrections Orders and improving assessment and data collection to improve Corrections Victoria's identification of people with a disability entering the system. Corrections Victoria seems to be aware of many of the problems in the system which are contributing to an increasing prison population. However, there is insufficient information to know whether the measures that Corrections Victoria have implemented to meet those priorities are sufficient. This information must be provided transparently to the public so that the public can be engaged in the discussion of what works when it comes to responding to criminal behaviour.

- 1 Report on Government Services, Corrective Services attachment, 2014. Further information may be provided to the Office of Correctional Services Review (now known as Justice Assurance and Review Office), but if it is, this is not made readily available to the public.
- 2 Corrections Victoria, Corrections Victoria Disability Framework 2016-2019, Expanding the Opportunities, Strategic Policy and Planning.

COMMUNITY SERVICES

RECOMMENDATION 28

THAT CORRECTIONS VICTORIA BE REQUIRED TO PREPARE DETAILED, PUBLICLY AVAILABLE REPORTS ON KEY PERFORMANCE MEASURES.

Reliable, respectful support for people with an ABI in the community

While participants identified the lack of meaningful support in the criminal justice system as a barrier to being able to break their contact with it, they also felt that being unable to access support and stable housing in the community was a significant contributing factor. Without support in the community, participants described how quickly they fell into harmful drug and alcohol use, unhealthy relationships and, finally, contact with the criminal justice system. The reasons why participants were unsupported in the community were varied. Most had become disconnected from family, and were reliant upon community services to support them. Like the majority of people with an ABI in prison, most participants had a mild to moderate ABI, a factor which contributed to their disability remaining hidden or considered in isolation, not severe enough to qualify for the support services that participants felt they needed.¹ All but one participant was able to access supported accommodation for people with an ABI, despite other participants having significant support needs. Participants were also frustrated that accessing support often required them to engage with a different service for each different need; a challenging task for anyone, let alone someone with an ABI.

Even where participants were able to access some support, many felt that some disability services were ill-equipped to deal with the challenges they presented. Some described a perception that their prior or ongoing contact with the criminal justice system meant that "most of them don't want to deal with you". It is difficult to know whether this perception simply reflects a system that is overburdened and therefore can only offer support to those with the most acute needs or whether it reflects the need for education and attitudinal shifts in the sector regarding the over-representation of people with a disability in the criminal justice system. With the national rollout of the NDIS underway, the disability service delivery landscape is changing, which has the potential to improve the situation for those with an ABI who meet the functional capacity² criteria and qualify for support. However, the constraints of the NDIS mean that only one out of ten people living in Australia with a disability will get access to NDIS supports.³ Many working in the sector have significant concerns that, just like under the current Individual Support Plan model funded by the Department of Health and Human Service (DHHS),⁴ people with a mild ABI (a vast proportion of those in contact with the criminal justice system),

- 1 For example, the definition of disability in the Disability Act 2006 must be met for a person to qualify for a DHHS funded Individual Support Package. That definition is limited to an intellectual disability or a developmental delay or a sensory, physical or neurological impairment or acquired brain injury or any combination thereof, which is, or is likely to be, permanent; and causes a substantially reduced capacity in at least one of the areas of self-care, self-management, mobility or communication; and requires significant ongoing or long term episodic support; and is not related to ageing.
- 2 Sections 22-25 of the National Disability Insurance Scheme Act 2013 set out the functional capacity criteria required to be met to access the NDIS.
- 3 K Soldatic, et al, (2014) 'Intellectual Disability and Complex Marginalisation Under the National Disability Insurance Scheme', Research and Practice in Intellectual and Developmental Disabilities, 1:1, p 8.
- 4 DHHS provides individual funding via an Independent Support Package (ISP) to those who have a disability as defined by the Disability Act 2006, need ongoing disability support, meet the priority for access criteria and have their support needs recorded on the Disability Support Register. ISP funds may be used to buy a range of supports chosen by the person to help achieve their goals, which may include individually delivered supports and/or group based supports such as a day service.

including those whose ABI occurs in combination with a range of complex issues, will not be eligible to access the scheme. There is great concern that people who have a mild ABI in combination with a range of co-morbidities, such as mental illness, homelessness or drug or alcohol substance use disorders will not qualify for assistance because the NDIS will not consider the impacts of those co-morbidities in determining a person's functional impairment if those co-morbidities do not meet the definition of 'disability' in the NDIS Act.

For example, a person's capacity to manage self-care, such as remembering to shop for groceries and eat meals, may be reduced by their ABI, but might also be worsened by fluctuating anxiety or depression. A person with mental illness will not be able to access the NDIS unless that person's mental illness is determined to be a 'psychosocial disability'; meaning that it is significant and is likely to be permanent.¹ The flaws in this approach are apparent when participants explain that they are not able to distinguish which of their behaviours was a cause of their ABI or a co-morbidity:

“Hey, I’ve got ABI and I’ve got mental illness, right? I don’t know the difference between them.”²

A great deal of uncertainty surrounds how a person with complex needs will have their functional capacity assessed and the issues associated with ensuring this already isolated cohort will be assisted to access the NDIS have not been addressed. The cohort in contact with the criminal justice system may not have the capacity, nor be able to access support, to apply for assistance under the NDIS and they may have limited capacity to self-advocate or make informed choices about services they receive.³ Yet the risk to the individuals and to the broader community if this cohort is overlooked by the scheme is further offending and more people with a disability ending up in the criminal justice system.

Of particular concern is that fact that people in prison will not be able to apply the access the NDIS while they are in prison, with the only means of access being an online or in person application. To ensure that people with an ABI are able to apply to access support from the NDIS (including while they are in prison) specific funding should be allocated to existing advocacy and legal services experienced in working with people with disability and experience of the criminal justice system to assist this cohort to apply for funding and, where required, seek administrative review of decisions.

The experiences of project participants also indicate that there is a gap in the service delivery landscape for people with an ABI and complex needs who are in contact or at risk of contact with the criminal justice system. Services which have the capacity to support people with an ABI and complex needs who are in contact with the criminal justice system should be encouraged to become NDIS registered organisations so that people with an ABI and complex needs with NDIS funding have access to appropriate community supports.

1 NDIS Factsheet, Psychosocial disability, recovery and the NDIS, November 2016; also confirmed in stakeholder consultation with NDIA, Geelong, 31 August 2016. These organisations currently receive 'block funding' to enable them to deliver services to people who are not accessing services in accordance with and Individual Support Package.

2 Justice User Group meeting 9, 18 October 2016.

3 K Soldatic, et al, (2014) 'Intellectual Disability and Complex Marginalisation Under the National Disability Insurance Scheme', Research and Practice in Intellectual and Developmental Disabilities, 1:1.

Even still, as identified earlier, there will be a large proportion of people with an ABI who will not be eligible to access NDIS funding. For example, those with a mild ABI will be unlikely to meet the functional impairment criteria for accessing support. People with multiple overlapping needs, which might be individually assessed as being low level or mild, are often those most socially marginalized and excluded from accessing community services that are segregated into silos.

The Enabling Justice project has itself demonstrated the great need people with an ABI and complex needs have for social participation and flexible, person-centred support. During evaluation workshops and individual interviews, when asked what they gained from the project, members of the Justice User Group spoke of building their confidence, making friends, feeling that they were making a difference, and sharing knowledge and experiences. Others experienced improvements in their personal circumstances over the course of the project as they benefited from flexible support and referrals provided by Jesuit Social Services project staff:

“Friendship [was gained through taking part in the project]. Um, lots of things actually behind the scenes.... It’s been good to hear other people’s opinions about things and they’re all pretty spot on... [on a personal level] it has been really good. The housing got fixed up...that was excellent.”¹

The rollout of the NDIS will potentially worsen this situation for people with a mild ABI combined with complex needs, as the scheme itself concentrates on supporting those with the most acute functional needs, while funding is removed from community support organisations that don't apply strict eligibility criteria.² Therefore, it is important that flexible support is available in the community for people who are not NDIS funded both to facilitate their participation in the community and to assist them to stay out of contact with the criminal justice system. This should include funding of services that host and facilitate peer support and advocacy groups. Peer support and advocacy groups can function as a clearing house that helps people find out about and link to appropriate mainstream and specialist health and disability services, but also provides opportunities for meaningful participation and social interaction. Services that currently function as a support service of 'last resort' include those in the homelessness sector. The continuation of funding to those services is a crucial safety net in preventing the most marginalized members of the community from being overlooked by the support service system as a result of the NDIS.

For those already in contact with the criminal justice system, support must be available in the community to assist them to complete Community Corrections Orders, such as taking them to appointments with community corrections, or to comply with bail conditions, such as assisting them to remain drug and alcohol free. Without such support,

1 Participant evaluation interview 4, 8 December 2016.

2 Council to Homeless Persons, Submission to the Joint inquiry into and report on the provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition, February 2017. See also K Soldatic, G can Toorn, L Dowse, K Muir (2014). Intellectual Disability and Complex Intersections: Marginalisation under the National Disability Insurance Scheme. Research and Practice in Intellectual and Developmental Disabilities, 6 - 16.

3 Baldry E 2012, 'Enabling or disabling; imprisoning people with mental and cognitive disability', Right Now – Human Rights in Australia.

people with an ABI and complex needs will continue to be charged with justice related offences, such as breaching Community Corrections Orders, at disproportionate rates. This may be achieved by funding a specialist support provider who is experienced in working with people who have been in contact with the criminal justice system.

RECOMMENDATION 29

THAT THE VICTORIAN AND COMMONWEALTH GOVERNMENTS CONTINUE TO PROVIDE, AND INCREASE THE PROVISION OF, EASILY ACCESSIBLE COMMUNITY SUPPORT SERVICES THAT SEEK TO ENHANCE SOCIAL INCLUSION AND PROVIDE CONNECTION TO HEALTH AND OTHER SERVICES FOR INDIVIDUALS WITH AN ABI AND COMPLEX NEEDS WHO DO NOT QUALIFY FOR NDIS SUPPORT. THIS SHOULD INCLUDE FUNDING FOR THE ESTABLISHMENT AND FACILITATION OF PEER SUPPORT AND ADVOCACY NETWORKS THAT PROMOTE SOCIAL INCLUSION AND PARTICIPATION FOR PEOPLE WITH AN ABI AND COMPLEX NEEDS.

RECOMMENDATION 30

THAT THE VICTORIAN GOVERNMENT PROVIDE FUNDING TO BOTH ADVOCACY AND LEGAL SERVICES TO ASSIST PEOPLE WITH AN ABI AND COMPLEX NEEDS IN CONTACT WITH THE CRIMINAL JUSTICE SYSTEM— ESPECIALLY THOSE IN PRISON—TO ACCESS THE NDIS.

A system that supports people with an ABI provides them with secure, suitable housing and assistance.

Inadequate, precarious and inappropriate housing was identified as a constant source of worry and instability in the lives of participants, keeping them socially isolated and excluded.

“They might as well have thrown me on the street, I was so more settled when I had public housing – I was there for 15 years and all of a sudden I’ve got nothing – I lost everything that I had in that flat because I went to gaol, it just went out the window and I’ve got to start all over again.”¹

¹ Justice User Group meeting, 4 August 2015.

The lack of access to supported and secure housing for many participants meant that they were refused bail or were ineligible for parole. Imprisoning people simply because—as a result of their disability—they struggle to find supports or accommodation in the community, is in breach of their human rights and is both wrong and an expensive approach to homelessness. Like many leaving prison, most participants interviewed were released from jail into homelessness or housing instability, taking refuge in boarding houses or sleeping rough or with old friends or associates. Participants said that in these situations a return to drug or alcohol use was inevitable and many described breaching parole or being arrested for new criminal offences soon after their release from prison.

The prevalence of homelessness among project participants is not unique to that particular group – recent research findings demonstrate that this is increasingly a common experience of all people leaving prison.¹ We know that the majority of the prison population has a mental illness or cognitive disability, or both, and that these people cycle in and out of prison at a greater rate than those without disability.² We also know that those without secure housing are more likely to offend and to return to prison.

Despite what we know, there is insufficient housing stock reserved for people leaving prison – the majority of whom have a disability. The private rental market is inaccessible to vulnerable people on low incomes, waiting lists for social housing continue to climb and the demand for supported accommodation for people with more intensive support needs far outweighs availability.³ While homelessness services and community support organisations do their best to prevent people exiting prison from homelessness, without a house to send them to, the value of any support they provide is going to be limited and lack sustainability.

While some in the community may feel that people being released from prison are the least deserving of secure housing, the links between housing and re-offending are well established⁴ and cannot be ignored. Failing to meet the housing and support needs of people with an ABI in contact with the criminal justice system clearly impacts those individuals, but it also impacts the broader community, who want the criminal justice system to make us safer. Therefore, people with an ABI or complex needs who are being released from prison should be prioritized⁵ for public housing or safe transitional housing. In our view, this can be achieved by providing community support programs (for example, those run by Jesuit Social Services, VACRO, ACSO and VALS) with access to a greater number and range of properties where clients can be provided with accommodation that meets their individual needs. Innovative and cost-effective housing solutions, such as the modular housing with on-site support being commissioned by the Minister for Housing, Disability and Ageing, Martin Foley,⁶ should be explored further as part of the process of developing solutions.

In addition, community support and reintegration programs currently provide the majority of those who qualify with up to four weeks of support post-release (along with pre-release support). This timeframe will almost always be insufficient for people with

¹ For example, recent figures from the Australian Institute of Health and Welfare (AIHW) reveals that in just three years, the number of Australians exiting prison that have sought help from a homelessness service has increased by 54%.

² Parity, I Shall Be Released, March 2017.

³ Victorian Ombudsman, Investigation into the reintegration and rehabilitation of prisoners in Victoria, September 2015, p 102.

⁴ Baldry E, McDonnell D, Maplestone P, Peters M, 2003 Ex-prisoners and accommodation: what bearing do different forms of social housing have on social reintegration, AHURI Final Report, AHURI, Melbourne.

⁵ The Victorian public housing register has recently changed the way it allocates housing to applicants. People need for urgent accommodation who have special needs can apply for Priority Access.

⁶ Media Release, Minister for Housing, Disability and Ageing, 14 June 2017, 'On Site Housing And Support For Rough Sleepers'.

complex needs leaving prison to secure and sustain housing. Incredibly, the decision to fund up to four weeks of post-release support is not supported by a strong evidence base demonstrating the impact of this time investment. Conversely, post-release support programs, which provide longer periods of support or that match their length and intensity of support to the needs of individuals, such as the Extended Throughcare Pilot Program in the ACT, have demonstrated positive impacts.¹

Of course, some people with an ABI will require ongoing assistance to sustain their tenancies. While those who qualify for an NDIS package may be able to access that kind of support through their registered provider, those who do not will need to rely on the support available from community support and reintegration services and tenancy support services, such as the Social Housing Advocacy and Support Program (SHASP),² for which funding in the recent past has been precarious. The 2017/18 Victorian State budget announcement that SHASP (now called Tenancy Plus) will receive an additional \$1.5 million annually is an important recognition of the value that these services provide to people in need and must continue to be enhanced.

For people with long term, intensive and complex support needs, there is a distinct lack of supported housing options available. Currently, the number of places available in Victoria for supported community housing is insufficient to meet the needs of those who are unlikely to be able to live unsupported in private or public housing, especially younger people. One project participant's experience around the time of his engagement with the project (and soon after his release from prison) highlights this issue. The participant is likely to require long-term support, yet was unable to secure one of the few appropriate supported housing places available upon release from prison. The participant was provided housing in an aged care facility, despite only being in his forties. Fortunately, the project support worker was able to find more suitable accommodation, but only through persistent advocacy. People who meet the NDIS eligibility criteria may qualify for supported accommodation—matched to their needs—as part of their package. However, those who do not qualify, who will be many, may still require support to maintain housing and must be provided with options beyond the NDIS. Lack of appropriate, secure, affordable housing is still a major issue and gap in the implementation of NDIS.

One model that has demonstrated impact is the Housing First model, applied in small scale by a number of NGOs locally and internationally. For example, Mission Australia's philanthropically funded MISHA project,³ which provides housing and wraparound support services to men who are sleeping rough in Sydney, demonstrated a 100 percent tenancy retention rate after twelve months, delivering significant government savings by breaking the cycle of homelessness for that group of men. Corrections Victoria should investigate a similar model targeted towards people being released from prison who have an ABI and complex needs.

During the life of the project, some participants secured housing with social housing projects that included some limited in-venue support for tenants. Those who had experienced this type of housing

1 Griffiths A, Zmudzki F, Bates S (2017). Evaluation of ACT Extended Throughcare Program: Final Report (SPRC Report 02/17). Sydney: Social Policy Research Centre, UNSW Australia.

2 The Social Housing Advocacy and Support Program (SHASP) – recently renamed Tenancy Plus - provides tailored case management and support to public housing tenants to maintain their housing and prevent homelessness.

3 Zaretsky, K., Flatau, P., Clear, A., Conroy, E., Burns, L., and Spicer, B. (2014) A home at last: Tenancy achievements from a housing first homelessness program

were positive about the stability that it provided them, though expressed that its short-term nature caused them to feel unsettled and insecure. They were also critical of the level of support available, feeling that it was not sufficient to meet their needs. Nevertheless, participants who were social housing tenants had either not re-offended since securing their housing, or in the case of one participant, had experienced a significant decrease in the frequency and severity of their offending.

The experiences of participants in the Enabling Justice project, none of whom returned to prison during their connection with the project, demonstrates the impact of social connection and support in combination with housing. The Vision Housing model in the UK,¹ which provides decent quality accommodation in an area away from the offender's 'territory' on the day of release as well as advice and support for as long as it is needed, has demonstrated very positive outcomes for the clients it works with and could be worth exploring further as part of the process of developing solutions.² A notable feature of the Vision Housing model is its employment of ex-offenders, who understand the needs of clients. Any reintegration support model should consider the inclusion of people with lived experience, including those with disabilities, so that there is a genuine understanding of the needs of people leaving prison.

People who are imprisoned and have public housing tenancies are at risk of losing their tenancies due to their absence. The current Department of Health and Human Services policy only allows for a temporary absence of six months, with housing managers having some discretion to extend this in exceptional circumstances.³ This policy no longer reflects a long-term trend towards longer sentences, with those who the policy might have protected becoming fewer in number. This policy also fails to take account of the fact that a large number (over 30 per cent) of people in prison are on remand. For one participant, who lost his public housing tenancy that he had held for 13 years when he was sentenced to 18 months' imprisonment, this had a devastating impact on his life and has been a barrier to his rehabilitation.

We acknowledge that housing stocks are low and having housing sit vacant while a tenant is in prison is not a pragmatic use of scarce resources. It is the loss of housing in general, and moving to the 'bottom' of the housing register upon release from prison, rather than the loss of the specific property, that causes the most hardship. In the words of one participant:

“It doesn't have to be the same house, but you should at least be eligible when you come out. It just makes sense.”⁴

The current policy continues to penalise offenders well beyond the term of their sentence and should be reviewed and updated to reflect current sentencing practices.

1 Vision Housing is a London based charity.

2 Vision Housing, Self-evaluation, December 2013 states that since its foundation in 2007, Vision Housing has proven an 11% overall reduction in re-offending and sustained over 96 percent of tenancies.

3 Feedback from participants as well as Justice Connect indicates that this policy is applied inconsistently and relies upon a person in prison having access to a housing worker to tell them about the policy and assist them to complete the forms.

4 Justice User Group meeting, October 2016.

RECOMMENDATION 31

FURTHER TO RECOMMENDATION 26, THAT CORRECTIONS VICTORIA AND THE DEPARTMENT OF HEALTH AND HUMAN SERVICES MAKE AVAILABLE A LARGER NUMBER OF PROPERTIES TO COMMUNITY SUPPORT ORGANISATIONS, ACCESSIBLE TO PEOPLE WITH AN ABI AND/OR COMPLEX NEEDS BEING RELEASED FROM PRISON.

RECOMMENDATION 32

THAT THE VICTORIAN GOVERNMENT IN PARTNERSHIP WITH A CURRENT COMMUNITY SUPPORT PROVIDER ESTABLISH A PILOT HOUSING SUPPORT PROGRAM TARGETED TOWARDS PEOPLE IN CONTACT WITH THE CRIMINAL JUSTICE SYSTEM WITH AN ABI OR COMPLEX NEEDS LIVING IN OR REINTEGRATING BACK INTO THE COMMUNITY.

The program should:

- have access to specified social housing stock;
- have access to brokerage funding; and
- engage people with lived experience of the criminal justice system and ABI to assist in the design of the program and provide support.

RECOMMENDATION 33

THAT THE VICTORIAN GOVERNMENT PROVIDE LONG TERM AND INCREASED FUNDING TO HOMELESSNESS AND TENANCY SUPPORT SERVICES TO PROVIDE ASSISTANCE TO PEOPLE WHO HAVE EXITED PRISON AND WHO RESIDE IN PUBLIC AND SOCIAL HOUSING, TO SUSTAIN THEIR TENANCIES AND PROVIDE SUPPORT TO ADDRESS UNDERLYING ISSUES THAT MAY PLACE THEIR TENANCIES AT FURTHER RISK.

Reducing re-offending is a crucial part of improving community safety, yet over the past five years, Victoria's recidivism rate has increased and is now higher than the national average.

In 2017, Victoria had more people incarcerated in its prisons than at any time in its history. With forty-two per cent of Victorian prisoners returning to a sentenced term of imprisonment within two years of release and a further nine per cent returning the justice system with a sentence to be served in the community, our criminal justice system seems to be failing spectacularly at achieving what should be its most important goal.

Principal among those who are affected by this failure are people with an ABI, who are disproportionately represented in Victorian prisons and in the criminal justice system more broadly. When such a large proportion of those in contact with the criminal justice system have an ABI, understanding how they experience the system, and identifying and responding to their needs within it is critical to developing effective responses to reducing recidivism.

Recognising the importance of listening to people who have experience of the criminal justice system, and understanding what it is like to experience the system from their perspective lie at the heart of this project. As this report demonstrates, meeting the justice needs of people with an ABI will require the criminal justice system to **recognise, respect** and **support** people with an ABI. Unless the system responds to their justice needs, it will continue to fail people with an ABI, and these failures will be reflected in disproportionate levels of incarceration and rising human and financial costs.

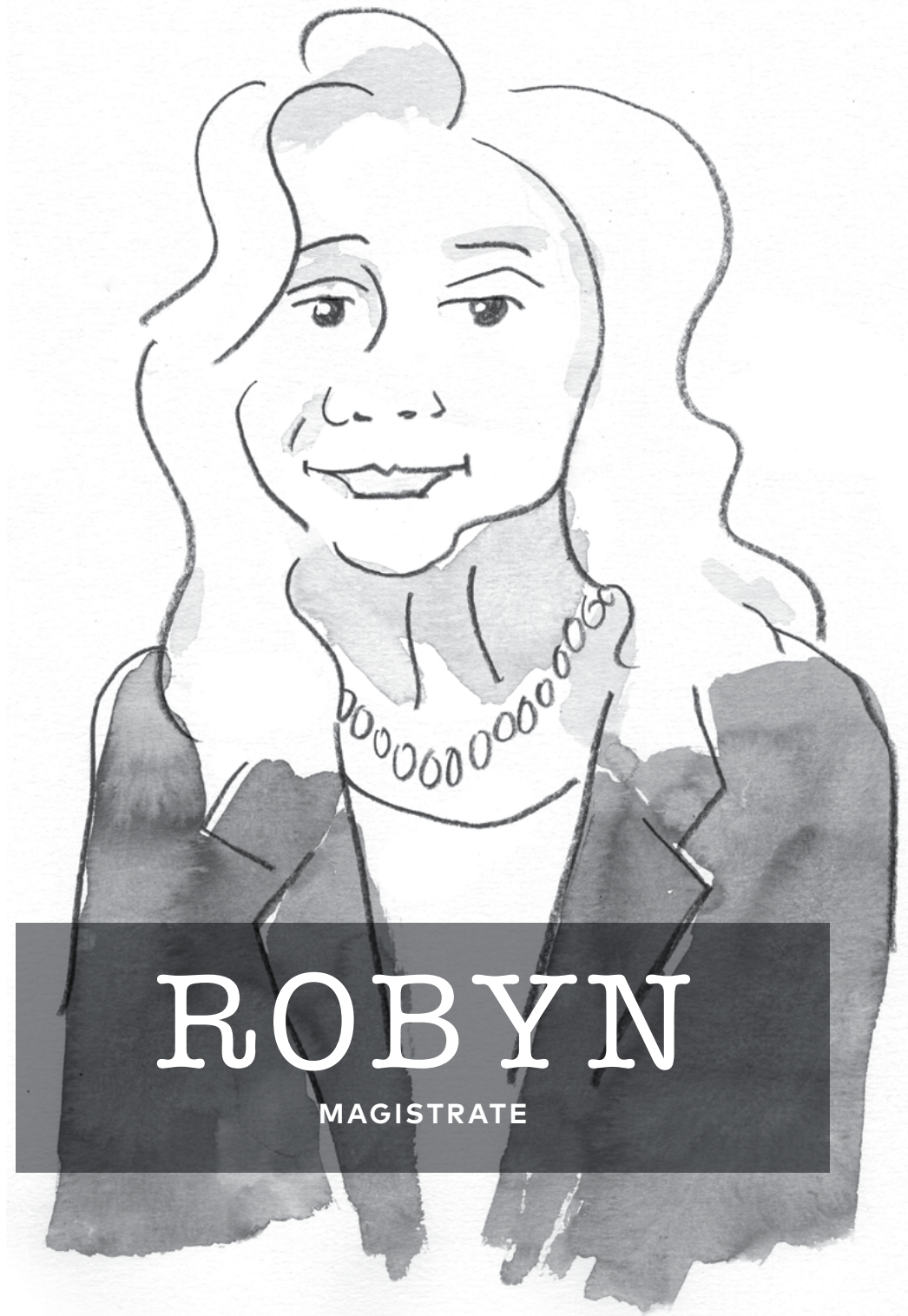
As this report also suggests, some fundamental changes to the way the system develops responses to the challenges it faces will also need to occur. Lasting solutions are unlikely if they do not involve meaningful participation by prisoners and offenders. Through the experiences and insights of the project participants and members of the Justice User Group, the Enabling Justice project has attempted to bring those closest to the problem a little closer to the resources needed to create change. It is hoped that the conclusion of this process is not the end, but rather the beginning of a new, more effective, approach to justice.

RECOMMENDATION 34

THAT THE VICTORIAN GOVERNMENT WORK WITH THE COMMONWEALTH GOVERNMENT TO UTILISE ALL AVAILABLE ECONOMIC LEVERS TO ADDRESS THE HOUSING AFFORDABILITY CRISIS.

RECOMMENDATION 35

THAT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES EXTEND THE PERIOD OF ABSENCE ALLOWED FROM A PUBLIC TENANCY FROM THE CURRENT MAXIMUM OF 6 MONTHS TO A MAXIMUM OF 12 MONTHS, WITH THE ABILITY FOR DISCRETION TO BE APPLIED.



ROBYN

MAGISTRATE

THE CURRENT APPROACH

Going to court can be a disconcerting experience. Courts today still operate according to a 'privileged knowledge system', using language and procedure that disorients and intimidates. For people with an ABI, this experience is more than disconcerting.

THE JUSTICE USER EXPERIENCE

When people misunderstand what is happening in court, or feel like they haven't been treated with respect, justice is not served. The critical opportunity for a court to be a catalyst for positive change is lost if the person being sentenced is not meaningfully engaged.

"I just wanted to get it over and done with. Every time. I never really listened to them that much, I think because they were talking words I wasn't understanding or listening to them or relating.

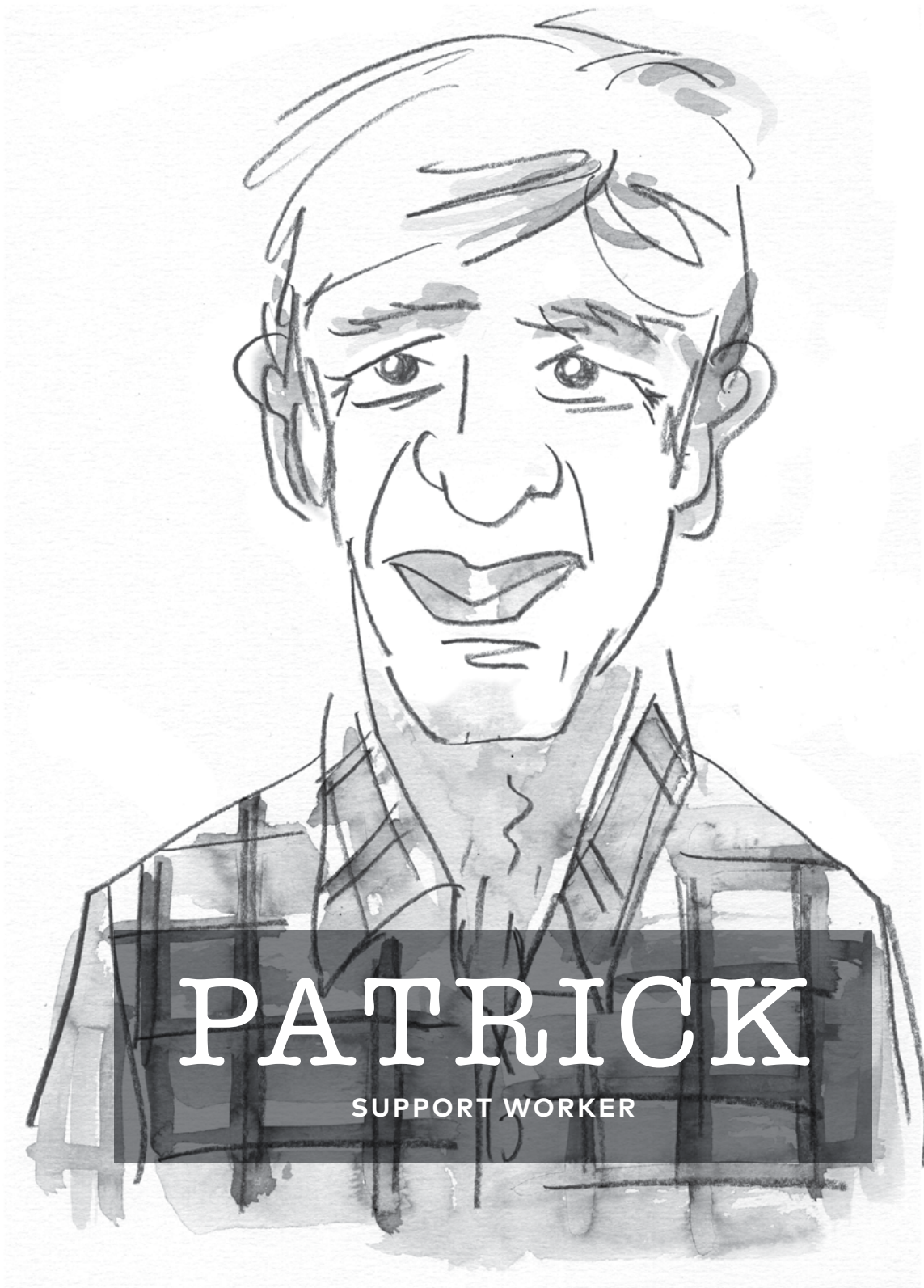
A lot of the time it used to be words that went past me, that's why I think I didn't really listen to them because they weren't talking to me and knowing that I was understanding?"

THE OPPORTUNITY FOR CHANGE

By contrast, those who had experienced solution-focused courts described feeling engaged in the process, largely due to the respectful way the Magistrate conducted the hearing and interacted with them. In the words of one participant: "You have to respect people. It's not hard."

What change looks like

- Courts use simple, clear language.
- People feel like they are treated with respect from the moment they enter court to the moment they leave.
- Solution-focused courts are widely available and are a positive intervention in a person's life.



PATRICK

SUPPORT WORKER

THE CURRENT APPROACH

Social connection and support are critical components in reducing re-offending. Yet many people with an ABI do not qualify for any significant pre or post-release support, and are not meaningfully supported by health and disability services in the community.

THE JUSTICE USER EXPERIENCE

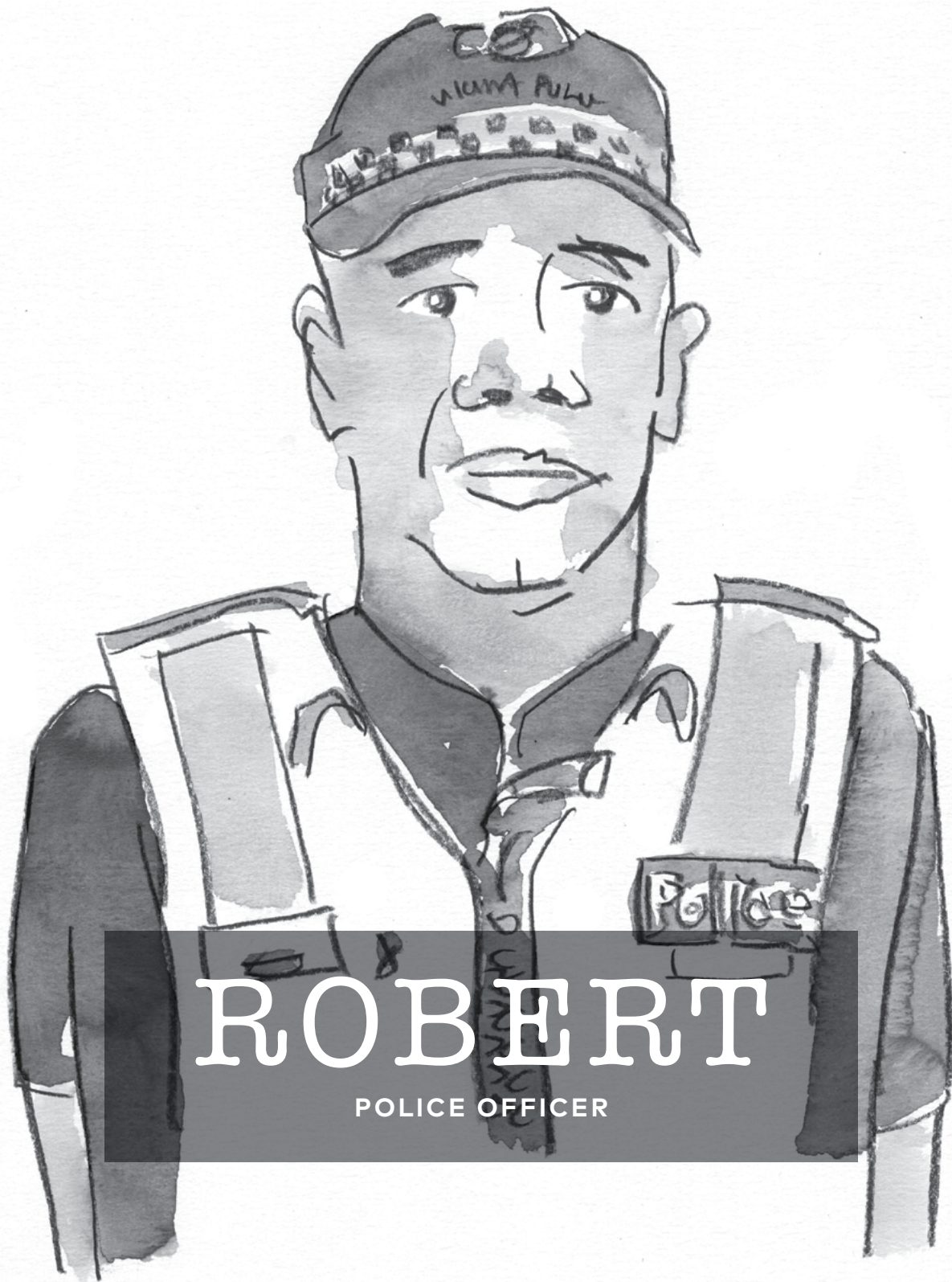
There is a lack of services in the broader community for people with an ABI and a lack of education about the needs and circumstances of people with an ABI. People with an ABI have largely not been afforded the support they deserve and which people with other disabilities receive. People with an ABI commonly access a range of disparate services, yet are without consistent, meaningful support.

THE OPPORTUNITY FOR CHANGE

Community support services have the opportunity to prevent people with an ABI from having further contact with the criminal justice system. Services must be user-centred, offering consistent and non-judgemental support. Importantly, community services have a role assisting people with an ABI to navigate the criminal justice system.

What change looks like

- People are assessed for pre and post release support according to their needs, not solely their risk.
- People working in the community sector afford people with an ABI the support and understanding they deserve.
- People with an ABI receive support while in custody and when living in the community via the NDIS.



THE CURRENT APPROACH

As the interface between the criminal justice system and the community, police play an integral role in how the system is viewed by people with an ABI. How people feel about their interactions with police can affect their experience of the rest of the system. It can also influence whether a person's support needs are identified or disclosed early on. While some support measures exist, there is not a culture of offering support among police, nor a strong awareness of those measures among people with an ABI.

THE JUSTICE USER EXPERIENCE

Fear and mistrust of the police were common among project participants, influenced by experiences of aggression, violence and disrespectful treatment. People were reluctant to disclose their ABI where they felt it would make them vulnerable and would not lead to an offer of support by police. Without support, many people with an ABI felt confused in police interviews and made decisions which would shorten the interaction but had long term consequences, adverse to their interests.

THE OPPORTUNITY FOR CHANGE

While police cannot be expected to be experts in disability, they must be trained to recognise when someone might need support and facilitate this to occur. Treating all people – including criminal suspects – with respect will make people with an ABI more comfortable to disclose their ABI and request support.

What change looks like

- A culture exists within Victoria Police of offering support to all people who identify that need, including access to the Independent Third Person.
- A support service is available that police can reliably call upon for people who identify or are identified as having support needs.
- An advocacy service assists people during their contact with the criminal justice system, from their first point of contact with police onwards.



THE CURRENT APPROACH

Despite their over-representation in the criminal justice system, people with an ABI are unrecognised and unsupported and therefore confused, frightened and disrespected in a system that is supposed to assist them to change their lives. Yet policy makers don't ask people with an ABI who are in contact with the criminal justice system about their experiences and their needs.

THE JUSTICE USER EXPERIENCE

Often the only people with a complete view of the system and with insight into how effective the system is for them are the people in contact with it, and the people to whom interventions are targeted. Yet the views of people charged with criminal offences are not sought, making them feel irrelevant to the process and entrenching ineffective responses.

THE OPPORTUNITY FOR CHANGE

When such a large proportion of people who have contact with the criminal justice system have lived experience of disability, substance use, disadvantage, poor educational attainment and trauma, the criminal justice system must be designed to be responsive to their needs. Asking the people who are most affected about what they need will improve the system.

What change looks like

People with lived experience of the criminal justice system and disabilities such as ABI are consulted by policy makers about what their needs are and how these could be met.



DAVID

CORRECTIONS OFFICER

THE CURRENT APPROACH

Custodial officers work with a complex, high needs group of people. Case management ratios combined with the rate of staff turnover means that corrections staff struggle to develop relationships with the prisoners assigned to them. Despite a comprehensive Offender Management Framework that identifies the need for case managers to be trained and skilled to effect behaviour change, the level of support and services made available is dependent on the prisoner's level of risk (as opposed to their need).

THE JUSTICE USER EXPERIENCE

Many participants felt that custodial officers, even those who were assigned as their case managers, did not see it as their role to support them, but instead only to maintain prison order.

“When I was in there, I felt as though I wasn't heard. Every time I spoke, I felt like I wasn't being listened to.”

Similarly, those who had been on community corrections orders felt that staff saw it as their role to monitor breaches and non-compliance rather than provide active support.

THE OPPORTUNITY FOR CHANGE

An informed, skilled workforce was seen as the key to a corrections system that would recognise, respect and support people with an ABI. The Justice User Group, as well as most stakeholders consulted, felt very strongly that Justice Plans should be available to people with an ABI and were confident that they would receive more appropriate support from Disability Services than Community Corrections.

“You've got to have a case manager otherwise you've got nothing.”

If support were available prior to and at the point of release, fewer people with an ABI would return to prison.

What change looks like

- Corrections Victoria staff are trained to recognise, respect and support people with an ABI.
- Justice Plans are available to people with an ABI.
- Pre and post-release support is available to all people with an ABI and complex needs.

SECTION 3

CONCLUSION

REDUCING RE-OFFENDING IS A CRUCIAL PART OF IMPROVING COMMUNITY SAFETY, YET OVER THE PAST FIVE YEARS, VICTORIA'S RECIDIVISM¹ RATE HAS INCREASED AND IS NOW HIGHER THAN THE NATIONAL AVERAGE.²

In 2017, Victoria had more people incarcerated in its prisons than at any time in its history. With forty-two per cent of Victorian prisoners returning to a sentenced term of imprisonment within two years of release and a further nine per cent returning the justice system with a sentence to be served in the community,³ our criminal justice system seems to be failing spectacularly at achieving what should be its most important goal.

Principal among those who are affected by this failure are people with an ABI, who are disproportionately represented in Victorian prisons and in the criminal justice system more broadly. When such a large proportion of those in contact with the criminal justice system have an ABI, understanding how they experience the system, and identifying and responding to their needs within it is critical to developing effective responses to reducing recidivism.

Recognising the importance of listening to people who have experience of the criminal justice system, and understanding what it is like to experience the system from their perspective lie at the heart of this project. As this report demonstrates, meeting the justice needs of people with an ABI will require the criminal justice system to **recognise, respect and support** people with an ABI. Unless the system responds to their justice needs, it will continue to fail people with an ABI, and these failures will be reflected in disproportionate levels of incarceration and rising human and financial costs.

As this report also suggests, some fundamental changes to the way the system develops responses to the challenges it faces will also need to occur. Lasting solutions are unlikely if they do not involve meaningful participation by prisoners and offenders. Through the experiences and insights of the project participants and members of the Justice User Group, the Enabling Justice project has attempted to bring those closest to the problem a little closer to the resources needed to create change. It is hoped that the conclusion of this process is not the end, but rather the beginning of a new, more effective, approach to justice.

1 Recidivism rate relates to the number of sentenced prisoners who return to prison in the two-year period following their release.

2 Victorian Ombudsman, Investigation into the rehabilitation and reintegration of prisoners in Victoria, September 2015.

3 Steering Committee for the Review of Government Service Provision, Report on Government Services 2016, C19.

APPENDICES TO THIS REPORT

APPENDIX 1

FURTHER BACKGROUND TO THIS REPORT

ABI

This report takes the term acquired brain injury (ABI) to mean any damage to the brain that takes place after birth, causing a decline in a person's previous level of functioning.¹ In recognising that many people in the criminal justice system are unaware that they have an ABI, this report intends for the term to capture people with an ABI – diagnosed or not, known or unknown. Like most injuries, an ABI can range in severity, depending upon factors such as the nature and location of the injury. References to people with an ABI in this report intend to capture people who experience an ABI of any severity. We also acknowledge that while most people with an ABI in the criminal justice system have a mild injury, those with a mild injury experience the highest rates of co-morbidities (mental illness, substance abuse) which, in combination, can give rise to significant support needs but can also mean that a person's ABI is at risk of being undetected.

JUSTICE USER

Throughout this Report, the term 'justice user' is used to describe people who have experienced the criminal justice system first hand. This has been a deliberate choice. Firstly, consistent with a person-centred approach, the term 'justice user' emphasizes that the criminal justice system should be designed with the needs of the people who come before it in mind. The designers of the criminal justice system have typically failed to consider the needs of justice users, in part due to a pervading view that a system cannot be both punitive and consultative. We disagree, believing that an approach which fails to respond to the needs of its users may explain the growing recidivism rates and the consequential economic and social cost of an increasing prison population. Secondly, unlike the terms 'offender' and 'prisoner' which are highly stigmatized (and technically incorrect once a person's sentence has been served), the term 'justice user' is neutral and can be applied regardless of the currency of a person's offending.

DISABILITY

Like the UNCRPD, we adopt the social model of disability,² which views disability as the result of the systemic barriers, negative attitudes and exclusion by society as the main contributory factor in disabling people. Like the UNCRPD, we recognise that:

1 Looking Forward, Arbias.

2 Michael Oliver; Bob Sapey (27 April 2006). *Social work with disabled people*. Palgrave Macmillan. ISBN 978-1-4039-1838-3.

Disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.¹

Therefore, disability which arises as a result of physical, neurological or cognitive impairment – including mental illness – are all included when we use the term disability.

PROJECT RATIONALE AND METHOD

METHOD

The extent of over-representation of people living with an ABI in Victorian prisons,² once known, was a call to action for project partners, RMIT's Centre for Innovative Justice and Jesuit Social Services, to see the situation remedied. Through philanthropic funding administered by the Office of the Public Advocate, project partners were able to deliver the **Enabling Justice project**.³ Knowing that the best way to achieve change was to engage those directly affected to identify the solutions, the project established a forum of justice users—people living with an ABI who have encountered the criminal justice system—and a supportive environment for them to meet and share their experiences. The forum is the first of its kind in Australia. Invoking both a human rights approach and the participation principle from the disability rights movement "nothing about us without us",⁴ this model allowed us to understand, in a very personal way, how the criminal justice system is experienced by people with an ABI. While this approach identified the ways in which the system fails to meet the needs of this cohort, it also identified the opportunities for change. In addition, the model allowed people with an ABI to become self-advocates, using their experiences to demonstrate the need for change.

The pragmatic idea of design thinking – based on the view that systems, services, products and environments should be designed with their users in mind – also informed our approach. Our legal system has been designed with convention and procedural efficiency as its hallmarks, with people's experience seeming to be irrelevant.⁵ Despite their centrality to the criminal justice system, "users" of the system are not consulted about whether their needs are being met and, if not, how they might be. While this failure can be understood (the risk of such consultation being perceived as being "soft on crime" or "criminals telling us what to do"), running expensive programs without obtaining feedback from users or evaluating impact is unheard of in any other area, particularly those which are funded directly from the public purse.

PROJECT AIMS

This project sought to explore how people with an ABI experienced the criminal justice system, through the facilitation of a forum for people with that lived experience. In so doing, the project had three connected aims:

- to hear from people with lived experience of an ABI about their experiences of the criminal justice system;

1 Preamble to the Convention on the Rights of Persons with Disabilities.

2 Martin Jackson, Glen Hardy, Peter Persson and Shasta Holland, 'Acquired Brain Injury in the Victorian Prison System' Corrections Victoria Research Paper Series Paper No. 04 April 2011.

3 For details of the grant and all ABI projects funded under it please refer to the website of the Office of the Public Advocate.

4 See James Charlton, *Nothing About Us Without Us*, University of California Press, 1998. See also Eilionoire Flynn 2015, 19.

5 See Tom R. Tyler 'Procedural Justice and the Courts' *Court Review* (2008) Volume 44, 31.

- to identify and develop practical and achievable suggestions designed to improve the criminal justice system for people with an ABI; and
- to build the capacity of the Justice User Group members to participate in discussions about the criminal justice system and to become self-advocates, drawing upon their expertise gained from lived experience.

PROCEDURE

Interviews

The Enabling Justice project researchers conducted in depth, semi-structured interviews¹ with 21 individuals with lived experience of ABI and the criminal justice system. Interview participants were referred to the project researchers by a broad range of organisations who work with people with an ABI and justice needs, such as community support program providers Jesuit Social Services, VACRO, Flat Out and Victorian Aboriginal Legal Service; Victoria Legal Aid and community legal centres, homelessness services and disability support services. Identifying and attracting women to participate in the project was a challenging task. By July 2016, after a further targeted recruitment drive, four women had participated in an interview; two had become active and ongoing participants.

Justice User Group meetings

Those interviewed were invited to continue to participate in the project by joining a Justice User Group. The Justice User Group met bi-monthly, from June 2015 to December 2016 to discuss their experiences of the criminal justice system, the recommendations of others² and their own ideas for change. A number of individuals interviewed chose not to join the group, but their experiences allowed us to gain a broader understanding of the issues and to ensure that our research sample was large enough to demonstrate trends. The findings from the broader interview group informed the discussions held with the Justice User Group once formed.

While initially there was some fluidity in the make-up of the Justice User Group, for the final ten months of the project, group numbers have remained steadily at nine, with one additional participant choosing to remain an active participant in all aspects of the project except group meetings. Seven men and two women are represented on the group and two of the participants are Aboriginal.

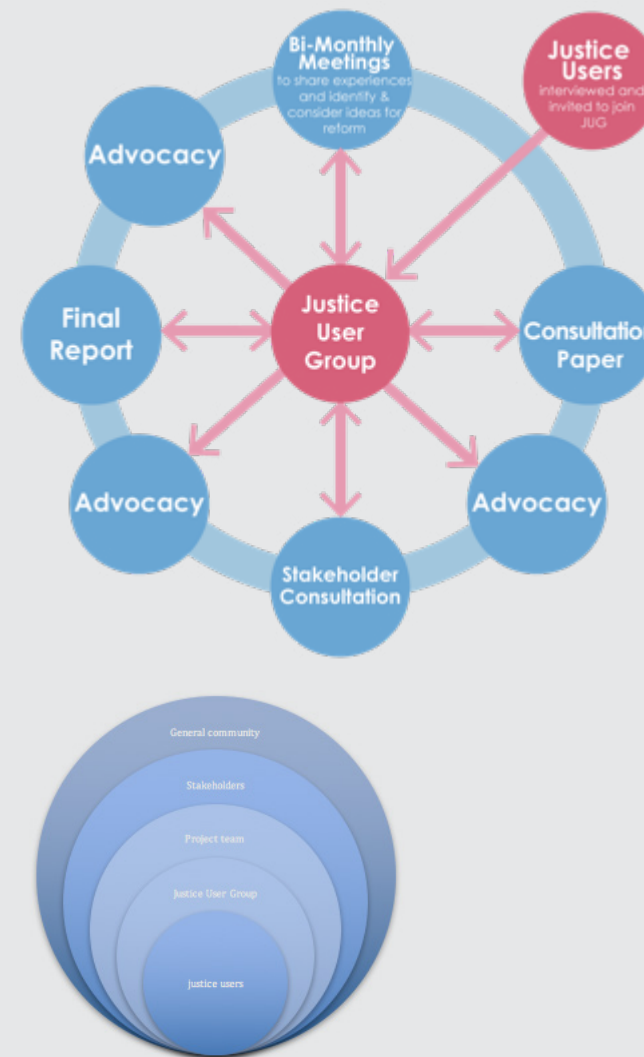
While the representation of women in the group is consistent with the number of women (as opposed to men) in prison, ensuring that the female experience was explored and captured was important to the project partners. For this reason, we altered the way in which one woman participated in the project, meeting with her one on one to obtain feedback and offering her opportunities to participate in advocacy on her own terms.

Crucial to the project was the provision of professional flexible and person-centred support to the participants by Jesuit Social Services' Brosnan Services. This enabled the participants to remain supported throughout the life of the project, during which they continued to

1 The semi-structured interview questions are contained at Appendix 3 to this paper.
 2 Such as the recommendations contained in Victorian Ombudsman, Investigation into the rehabilitation and reintegration of prisoners in Victoria, September 2015; and Tony Vinson, Margot Rawsthorne, Adrian Beavis and Matthew Ericson, Dropping off the Edge 2015: persistent communal disadvantage in Australia, Jesuit Social Services and Catholic Social Services Australia, 2015.

experienced a range of ongoing complex challenges. The experience of supporting the participants is described in more detail in Appendix 2 of this paper. This reflection provides some insight into the complex and ongoing support requirements of people with an ABI exiting contact with the criminal justice system, especially prison. The extent to which participants came to rely upon the support of Brosnan Services demonstrates the dearth of appropriate resources currently available in the community for people with an ABI, particularly for those who have criminal justice interaction.

The diagram below demonstrates how the Enabling Justice project partners have engaged justice users and how the experiences, discussion and options contained in this paper have been informed by the Justice User Group.



At bimonthly meetings of the Justice User Group, ideas were proposed, discussed and revised and ultimately, a series of preliminary options emerged that were supported by the group and the project partners. Those options were outlined in a Consultation Paper released in June 2016. Feedback from stakeholders was invited¹ and a series of targeted meetings and workshops were held following the release of the Consultation Paper.

STAKEHOLDER CONSULTATIONS

Consultations with key stakeholders were conducted as below:

Written feedback received from:

- VACRO
- Victoria Legal Aid
- Justice Connect (Homeless Law)
- United Brains
- Magistrate Pauline Spencer

Stakeholder consultations held with:

- OPA: 29 July 2016
- Corrections Victoria: 1 August 2016
- Magistrate Court Support Services: 12 August 2016
- DHHS (Disability): 15 August 2016
- Victoria Police (Priority Communities Division): 16 August 2016
- Legal Assistance Sector: 22 August 2016
- Disability Sector: 13 September 2016
- Magistracy: 20 September 2016
- National Disability Insurance Australia: 31 August 2016
- West Melbourne Police: 28 November 2016

Additional Meetings:

- Homeless Law, Justice Connect: 12 September 2016
- Priority Communities Division, Victoria Police: 18 April 2016 & 20 October 2016.
- Arbias: 24 September 2016
- Synapse: 24 May 2016
- Third Meeting of the Project Advisory Committee, 4 August 2016
- VALS: 21 October 2016

While many of the options attracted significant support from stakeholders, some attracted opposition or indifference. All of this feedback was critical to formulating practical recommendations, capable of implementation and delivering real change.

ADVOCACY ACTIVITIES

Activities such as training, media interviews, presentations at conferences, awareness raising campaigns as well as engagement with the policy and legal reforms proposed in the Consultation paper and this paper, provided the Justice User Group with the opportunity to contribute their experiences and ideas for a meaningful purpose. Many described the involvement in the group as life changing; for some, it was the first time they had been viewed as the solution rather than the problem; others described a great sense of self-worth knowing they were contributing to something that might benefit others. The Justice User Group responded to various requests to participate in media, training and conference opportunities (outlined below) and were supported to undertake advocacy around the issue of homelessness, particularly regarding post-release housing, which they nominated as a priority policy area.¹

Between March 2016 and March 2017, the following media and advocacy opportunities were undertaken by the project partners and members of the Justice User Group:

DATE	DESCRIPTION	NO. OF PARTICIPANTS	NO. OF ATTENDEES	AUDIENCE
17 MAY 2016	Melbourne University training for lawyers and support workers, Melbourne	2 plus project staff	40	Lawyers and social workers from CLCs and Aboriginal Legal Services
9 OCT 2016	VLA Criminal Connections lawyer training, Melbourne	3 plus project staff	100	Criminal lawyers from VLA and VALS
27 JUNE 2016	Brain Injury Australia Forum, Sydney	1 plus project staff	50	Disability advocates, people with an ABI, disability service providers, academics
22 JUNE 2016	Reintegration Puzzle Conference, Geelong – Rob Hulls and Julie Edwards launch Discussion Paper	Project staff only	300-400	Academics, criminal justice system workers, advocates, social service system workers
21 JUNE 2016	Reintegration Puzzle Conference, Geelong – workshop	1 plus project staff	50	Academics, criminal justice system workers, advocates, social service system workers
11 MAY 2016	Disability Housing Forum, Geelong	3 plus project staff	150	Minister for Housing and Disability, advocates, disability support workers, people with disability.
4 AUG 2016	Three Hots and a Cot Launch	4 plus project staff	50	Minister for Housing and Disability, academics, criminal justice system workers, advocates, social service system workers
8 FEB 2017	Tenancy Managers meeting	Project staff only (and Justice Connect lawyer)	40	DHHS Tenancy Managers

¹ We thank the Council to Homeless Persons' Peer Education and Support Program and Justice Connect in particular for their support for the project and the JUG in this endeavour.

Media Coverage

DATE	PUBLICATION	FOCUS
12 JULY 2016	Done By Law, 3CR Radio	The Enabling Justice Project / ABI in the criminal justice system
18 SEP 2016	'Disabled and in jail: a double punishment', Clare Kermond, Sunday Age	Disability in prison
3 JAN 2017	Law Report, ABC Radio National	Prisoners Living With an ABI /the Enabling Justice Project
DEC 2016	Cityjournal	ABI in the criminal justice system
8 AUG 2016	RMIT/CIJ Talking Innovative Justice podcast interview	ABI in the criminal justice system / the Enabling Justice Project

APPENDIX 2

WORKING WITH THE JUSTICE USER GROUP – JESUIT SOCIAL SERVICES

“This project has changed my life...I’ve been able to tell my story. I didn’t think anyone cared. It used to feel like I was dragging around huge chains. Now, they’ve lifted off me.”

Participant, Enabling Justice project

1. BACKGROUND TO THE JUSTICE USER GROUP

A major part of Jesuit Social Services' contribution to the Enabling Justice Pilot Project was the establishment of the Justice User Group (JUG) and ongoing support provided to members of that group throughout the duration of the project. The Justice User Group (JUG) was comprised of men and women with lived experience of the criminal justice system and an Acquired Brain Injury (ABI). Each has commitment to making the justice system work better for them and others with complex needs; including ABI, as well as, homelessness, mental health, substance use and family violence.

By establishing the JUG, the project partners sought to use the lived experiences of group members to illustrate the systemic challenges and barriers of the system to better understand and adequately respond to men and women with this disability, and support them to advocate for change.

Jesuit Social Services was well placed to establish the group and support members both individually and collectively due to the organisation's significant experience working with men and women who present with a range of complex needs and who intersect the justice system. Jesuit Social Services has worked with people involved in the criminal justice system for over forty years, beginning with Four Flats, a residential housing service for men leaving Pentridge Prison. Today, Jesuit Social Services has several programs working with children, families, young people and adults involved in the criminal justice system in Victoria and the Northern Territory.

2. THE MODEL – COUNCIL TO HOMELESS PERSONS' PEER ENGAGEMENT AND SUPPORT PROGRAM

Research was undertaken on a range of different models that share the participant voice and consumer feedback. This work included

scoping local, national and international examples in a broad range of service contexts. Comparative analysis of three different methods were examined and assessed in order to develop an effective model for the JUG. These were:

- Peer Engagement and Support Program, Council to Homeless Persons
- Community Engagement Advisory Committee, Cohealth
- Working for Justice Group, Keyring, United Kingdom

All three of these models illustrated the different ways in which participant voice can be engaged. There was a wide variation in almost all ways in which these structures were developed and implemented in relation to:

- Purpose
- Membership
- Recruitment
- Tenure.

As a result of this research, it quickly became apparent that the Council to Homeless Persons (CHP) Peer Engagement and Support Program (PESP) provided a best practice model of working with people with complex needs further compounded by their experiences of homelessness; in an advocacy context. The main reasons for adopting key principles and practice of the CHP PESP model were:

- The similar profile of the participant group of the PESP and Justice User Group, including complex needs like Acquired Brain Injury, mental health, homelessness and offending.
- The success of this model in building the capacity of individuals and groups to be part of an advocacy agenda.
- The respectful and thoughtful approach of the CHP to the PESP members, which recognised and supported group members with ongoing challenges in their lives.

Jesuit Social Services met on several occasions with the Council to Homeless Persons to discuss key features of the PESP model and see what had been learnt to establish and support the JUG. The Council to Homeless Persons (CHP) staff were incredibly helpful and supportive in sharing their information and knowledge, having worked in this space for the past ten years with the PESP.

3. RECRUITMENT OF MEMBERS TO THE JUSTICE USER GROUP

A recruitment pathway for Justice User Group membership was developed and established. There were two steps to this:

- **STEP 1:** Centre for Innovative Justice (CIJ) and Jesuit Social Services conducted a semi-structured narrative interview with the participants in order to hear and record their personal stories in detail and in confidence.

- **STEP 2:** Those participants assessed by the Centre for Innovative Justice and Jesuit Social Services to have capacity to interact and participate in a group, with motivation, and the ability to engage in activities to undertake systemic change were invited to join the Justice User Group. Consideration was given to each person's capacity to function in a group setting, insight into their ABI and willingness to share these insights.

The first four members of the JUG were referred by ReConnect at Jesuit Social Services which provides post release support to participants in the North West region of Melbourne. Three referrals were received later in the project from Connecting Home, a service supporting Aboriginal men and women who are part of the Stolen Generation.

Initially, there were four members of the Justice User Group, with three participants consistently attending the group meetings. Numerous ongoing attempts were made to recruit additional members to the Justice User Group, by contacting several services such as:

- RDNS Homeless Outreach Program
- Department of Health and Human Services
- Disability Justice team
- Victorian Aboriginal Legal Service
- Ngwala Willumbong
- Winja Ulupna
- Arbias
- Ozenam Community Centre
- Flagstaff Crisis Accommodation, Salvation Army
- ABI Compass Clubhouse, Mission Australia
- Brain Injury Matters

Recruitment took time and effort, and was an ongoing process. In early 2016 a new round of recruitment occurred which resulted in five additional members being recruited to the Justice User Group. This brought the total participants in the program to nine, as well as one carer, who also attended meetings. The fact that any person on a current justice order could not participate in the project was perhaps an additional hurdle to recruitment, however this was stipulated as part of the approval for the project by the Department of Justice Human Research Ethics Committee.

4. KEY PRINCIPLES OF THE JUSTICE USER GROUP

The following key principles were identified through extensive research and consultation and were used to develop a model for the establishment and ongoing facilitation of the JUG. All of these principles were developed with the disability status and complex needs of the group members as the central consideration.

— **PRINCIPLE 1: INDUCTION OF GROUP MEMBERS INTO JESUIT SOCIAL SERVICES**

That the Justice User Group be a part of Jesuit Social Services, and not a stand-alone advocacy group. This principle allowed the organisation to undertake an induction process with clearly stated expectations in relation to behaviour that aligned directly with the Organisational Code of Conduct and policy positions, particularly in relation to disability and the criminal justice system. The term developed for this was model "supported self-advocacy".

— **PRINCIPLE 2: WHAT MAKES A GROUP?**

Training in how to work in a group was developed and delivered by Jesuit Social Services at the first meeting of the Justice User Group. The training included an introduction to advocacy, as this was a new term to most members of the group. Group work, and the ways in which decisions would be made was also discussed and agreed on. To assist the JUG members to understand the main concepts of working in a group, analogies with football teams were used to deliver the training. The example of a football team was used to enhance understanding of individuals working collaboratively toward shared goals.

All training developed and delivered to the group took account of the cognitive disabilities of the members. As people with an ABI can experience difficulty understanding and retaining new information, the information provided was simple, clear, provided in manageable amounts, and repeated.

Whilst most of the time the group functioned cohesively and effectively together, there were times when some members of the group became frustrated or angered by the behaviour or words used by others. When this occurred conversations were had which focused on how the behaviour was being perceived by others, even if this perception wasn't based in fact, and may not have been the intention of the person engaged in it.

It is expected that in any group there will be changing dynamics, however because of the complexity of many of the participants involved, it was important to address any conflicts as they arose before they escalated.

When conflicts did arise or frustrations were expressed the Coordinator, Adult Justice Special Projects spoke with participants individually about their behaviours, reiterating the Code of Conduct, when necessary. Participants were reminded that they were not to use drugs or alcohol prior to or during a Justice User Group meeting.

— **PRINCIPLE 3: MEANINGFUL AND PURPOSEFUL, NOT TOKENISTIC OR SELF-HELP**

It was agreed that the JUG be solution-focused and strengths based. It was important to understand that membership of the group was for those who were interested in discussing ideas and developing solutions, through sharing their story and not just focusing on the problem. As group members had already provided their story in detail through the narrative interviews, the focus of

the JUG was to identify priority issues and advocacy goals and strategies.

— **PRINCIPLE 4: PORTFOLIOS OF EXPERTISE/LIVED EXPERIENCE**

That members of the JUG be recognised as having portfolios, which related to their own lived experience, or expertise. For instance, those with lived experience of family violence could be called upon to speak about this issue as they are the experts of their experience and story. Other issues which were recognised as portfolios were the experiences of Aboriginal people with an ABI in the justice system, experiences of homelessness, child protection and youth justice, substance use, court processes, legal representation, prison, parole and policing.

— **PRINCIPLE 5: BUILD THE CAPACITY OF INDIVIDUAL MEMBERS**

That as well as developing and implementing advocacy activities the experience of being actively engaged in the Justice User Group would build the capacity of individual members to undertake self-advocacy in a range of areas of their lives. It was hoped that the JUG would develop new understandings and skills that would enable them to advocate successfully as individuals when needed, and to participate in a range of activities, events and discussions that would have a positive impact on them and their view of themselves.

5. JUSTICE USER GROUP MEMBERSHIP CRITERIA

In order to guide the development and ongoing operation of the Justice User Group, Jesuit Social Services developed a set of guidelines to both document and guide the operations of the group. These are detailed below.

Key features of the Membership Criteria were:

- That group membership be limited so that it could be effectively managed by Jesuit Social Services staff.
- That all group members be paid \$50 to attend and participate in each meeting, in recognition of their time and contribution to the project.
- As part of the ethics approval none of the JUG members were able to be serving a current Community Corrections Order, or be on bail or parole.

In addition to the Justice User Group Membership Criteria, the Justice User Group members developed a set of Group Agreements for their meetings, including appropriate behaviour, decision making and conflict resolution. These are discussed in section 6.

6. JUSTICE USER GROUP - MEETINGS AND MEMBERSHIP

The first two meetings of the Justice User Group focused on training members of the group and establishing a positive group culture.

At the first meeting the group members discussed and developed a set of Group Agreements to ensure positive and productive meetings that were respectful and fair. These included:

- Turning off phones.
- Talking one at a time.
- Focusing on the task and issue.
- Being respectful to each other.
- Taking breaks whenever needed.

Of particular value to the Justice User Group members was the second meeting when guest speaker Allan Martin, self-advocate for housing and homelessness from the Council to Homeless Persons PESP came and presented to the group on a recent advocacy campaign he had been involved in the "Call this a home" advocacy campaign, the purpose of which was to raise awareness of the decrepit and unsanitary conditions in private rooming houses across the state.

The power in hearing the experience of Allan cannot be underestimated, with the Justice User Group coming away commenting that perhaps they could "do it" too.

Meetings of the Justice User Group began in June 2015, and took place on a bi-monthly basis from this date until December 2016. A total of eleven meetings of the Justice User Group were held, with good attendance.

All meetings occurred at the Brunswick office of Jesuit Social Services, with lunch provided and transport to and from the meeting organised and paid for.

Acknowledging the importance of having a diverse membership of the Justice User Group, several attempts were made by the project partners to obtain representation of young people, women and Aboriginal and Torres Strait Islander people.

For several months this proved challenging; despite repeated attempts by staff at Jesuit Social Services and the Centre for Innovative Justice. Although disappointing to the project coordinators that more women were not involved; the two that were provided invaluable insight and feedback.

There are a number of possible reasons for the lack of engagement by women in the project. For example:

- Women with an ABI who are leaving prison are often focused on reconnecting with their families and children and may not have as much scope as some of the men to participate.
- There is also the potential that there is additional stigma and risk for women who have an ABI and lived experience of the criminal justice system because of gender—sometimes referred to as the "gender double standard"—referring to the cultural tendency in our community to judge women more harshly than men for wrongdoing. Some women may be reluctant to put themselves in the public gaze, which self-advocacy, to some extent at least, requires.
- Women with an ABI leaving prison experience high rates of current or past family violence which may make them reluctant to put

themselves into a public realm, particularly when there are current Intervention Orders in place.

- Some of the women we spoke with were reluctant to be involved in a project with men with an ABI with current or past contact with the criminal justice system.

One of the women involved in the project decided not to join the Justice User Group, but participated extensively in the project, through a number of advocacy avenues, including:

- Training lawyers and support workers at the University of Melbourne
- Media interview with the Law Report, Radio National
- Presentation at the Reintegration Puzzle Annual Conference in Geelong and Sydney
- Presentation to a nation-wide forum on criminal justice and ABI, Brain Injury Australia, Sydney

The other woman involved in the project, did join the Justice User Group, and with the support of her male carer, to whom she provided feedback and insight, provided valuable contribution to group dynamic and discussion.

In early 2016, five new members joined the project which greatly enhanced the make-up of the group, which then grew to:

- Two women (one of whom participated in advocacy outside the group structure)
- One carer
- Four men of Anglo Saxon or European background
- Three men of Aboriginal or Torres Strait Islander background

All participants in the Justice User Group were aged 35-plus so there was no representation from younger people with an ABI who had experience of the criminal justice system. Both project partners agreed that the main reason for this was likely to be that the project model of sitting down and meeting and discussing the impacts of an ABI in the criminal justice system may have been better suited to the interests and life stage of older people, than those in a younger age bracket. It may also be the case that younger people in the criminal justice system are neither as aware, nor as prepared to speak about, a perceived weakness, like an ABI, in a relatively public setting like the Justice User Group.

Only one group member that started with the group did not continue. This middle-aged male was not able to continue in the group because of commitments to family in regional Victoria and other issues which required his attention.

Justice User Group Meeting Structure

The meeting format was carefully considered and planned by Enabling Justice staff at Jesuit Social Services to meet the needs of the project outputs and ensure the participants felt safe and comfortable. Key features of this were:

- A structured yet informal format
- Same structure, time and place for every meeting
- Beginning each meeting by re-visiting the Code of Conduct to stress the importance of using language that was respectful and appropriate
- Developing Group Rules with the group members
- Ensuring plenty of time for discussion
- Breaks whenever needed
- Snacks accessible on the table
- Distraction tools such as, colouring books, pens, textas and modelling clay were provided
- Meeting always ended with lunch and a chat/debrief

Social isolation as a result of multiple factors is a major issue for the people participating in the Justice User Group. In order to support connections amongst the group, time was provided at each meeting for group members to chat informally and get to know each other.

7. ADVOCACY ACTIVITIES

The main focus of the advocacy work during the course of the Enabling Justice project was via discussion and direction-setting at the bi-monthly Justice User Group meetings at Jesuit Social Services.

In addition, Jesuit Social Services also supported members of the group to undertake a range of advocacy and education activities outside the meetings, and a list of these are included below:

- The Law Report, Radio National, February 2016
- Disability Housing Policy Forum, May 2016
- Training Design for the Unfitness to Plead Project, Melbourne Social Equity Institute, University of Melbourne, May 2016
- Brain Injury and the Criminal Justice System, Workshop, Sydney, June 2016
- Annual Reintegration Puzzle Conference, Geelong, June 2016
- Victorian Legal Aid Criminal Connections Forum, October 2016
- Reconnect Planning Day, Jesuit Social Services, February 2016

The opportunities for advocacy were greatly enjoyed by all members of the Justice User Group. Care was taken by Jesuit Social Services to ensure that these processes were as equitable as possible, and that all members of the group were given an opportunity to participate.

Most often the involvement of JUG members meant a speech or a Q and A session in front of an audience. Jesuit Social Services also ensured that members of JUG were paid by organisations who asked for their contribution.

8. SUPPORT OUTSIDE MEETINGS

The Jesuit Social Services practice framework provided a strong basis for effective engagement with participants in the Justice User Group, all of whom presented with complex needs, as well as lived experience of ABI and criminal justice system. Group members also faced ongoing challenges in relation to housing insecurity and homelessness, mental health, substance use, and perhaps the most difficult hurdle to overcome, social isolation and loneliness. Importantly, for some group members, meetings and other interaction with each other provided a vital avenue for non-judgemental connection and friendship with other people.

However, due to the complex needs of all of the participants engaged in the project, this interaction could at times also be a cause of frustration and unease among some members of the group.

As a holistic service which puts the person at the centre of the work, Jesuit Social Services was able to work with each of the participants in the Enabling Justice project in a way that was meaningful to them and addressed their individual needs. Jesuit Social Services was not restricted to supporting participants in relation to only the disability or the justice contact, but was able to support each person as an individual, with their own goals, issues, priorities and strengths.

As a result, the regular support provided outside meetings was person-centred not disability or justice centred, and was tailored to meet the individual needs of each of the Enabling Justice participants. For example, housing, family violence, mental health, job seeking, family reunification and so on. These goals and needs also changed during the course of the project, and project staff were able to respond accordingly.

Jesuit Social Services staff also worked closely with other supports and services engaged with the project participants, and were careful to provide consistent messages and approaches that would not disrupt or confuse them. The feedback from other services working with the men and women involved in the Enabling Justice project was always around how positive an experience their participation in the project was, and how important the opportunity to contribute in a meaningful way was for them.

Some of the individual outputs and outcomes for participants involved in the Enabling Justice project arranged by Jesuit Social Services during the course of the project are detailed below:

- Assisted participants to apply for Access Cards – free travel on public transport.
- Arranged neuropsychiatric assessments for people who had not been assessed previously or had one a long time ago.
- Advocated and facilitated for a move from an aged care facility to a supported accommodation for a forty year-old man with an ABI.
- Two participants successfully completed courses with Jesuit Community College courses: Barista and Food Handling; Introduction to Computers.

- Supported a participant to obtain a Working with Children Check for volunteering purposes.
- Placed referrals for ongoing case management to assist several participants to manage their ABI.
- Supported participants at court with attendance and support letters.
- Supported a participant to assist in building an Indigenous Healing Garden at the Bouverie Centre.
- Supported participants to apply for transfers to Office of Housing properties.

Assistance with bureaucratic processes and applications was necessary for many of the Justice User Group participants, many of whom otherwise avoided these tasks and then had to deal with the consequences of this. Often Jesuit Social Services staff provided assistance or acted as an intermediary between the person with the disability and the government service, private company, for example with:

- Office of Housing, regarding rent arrears
- Dame Phyllis Frost Centre, regarding unreturned property
- Utilities companies, regarding outstanding bills
- Medical practitioners, regarding access to Mental Health Care Plans

As the presentation and impacts of an acquired brain injury are often not well understood by these agencies and services the interactions that Justice User Group members had with them was often negative. However, when a worker was able to spend time explaining and assisting with the process, the outcome was always more positive.

9. BROKERAGE

All members of the Justice User Group had difficulties managing finances and were living on very restricted incomes, either NewStart or the Disability Support Pension.

In order to support project participants with other goals and aspirations, as well as difficulties and challenges that they have in their lives, Jesuit Social Services developed a Brokerage Policy and Guidelines. The aim of the Brokerage Policy was to provide financial assistance to support participants to achieve goals or overcome hurdles in their lives; and gain something from participation in the project that they did not previously have.

The amount of brokerage available to individual participants over the course of the project was \$500. All expenditure was required to adhere to the Brokerage Guidelines which were aligned with other programs delivered by the organisation.

Some of the items which Jesuit Social Services were able to support Enabling Justice participants to purchase were:

- A bicycle, for a participant who was repeatedly receiving fines on public transport.
- Clothes for a participant who had recently left custody.
- Art supplies for a participant who is an artist and activist.
- Gym shoes to assist a participant to exercise.
- A laptop for a participant interested in becoming more computer literate.
- Return flights to Sydney for a participant to visit her daughter.
- Accommodation for a participant, her carer and her step-daughter to have a holiday from their one-bedroom Office of Housing.

The brokerage funds were an important opportunity for people involved in the project to do things that they could never otherwise do, due to being on a low fortnightly fixed income, which keeps them at survival level, but doesn't allow for anything else. It was greatly appreciated by those involved in the project.

10. HOUSING ADVOCACY PROJECT – THREE HOTS AND A COT

Throughout the course of the Enabling Justice project, participants were very clear about the issues which they identified as an advocacy priority which impacted on people with an ABI with lived experience of the criminal justice system. Without doubt, a key issue for all members of the Justice User Group was the lack of affordable, safe, long-term housing when they are leaving prison. Having somewhere safe and affordable to live was viewed as critical to a smooth transition back into the community, and a starting point to be able to address the underlying causes of their offending behaviours.

To ensure that the lack of housing options for this cohort was amplified, the Justice User Group embarked on an advocacy campaign. The focus of the campaign was to highlight the lack of safe, affordable, long-term housing for this cohort; and show the impact it had on re-offending and recidivism. The group created a series of postcards to highlight the issue and express key messages through their artwork.

The campaign was called "Three Hots and a Cot", with the overarching theme being that at least in prison you get three meals a day and bed to sleep in; something that none of them could be guaranteed to get in the community. One of the members of the Justice User Group used this phrase and referred to the way in which it is sometimes easier to be in prison than outside and being homeless, because at least in prison you are have "three hots" (three hot meals) and a "cot" (bed).

The postcards were created with the assistance of an artist based at Jesuit Social Services' Artful Dodgers Studio in Collingwood over two consecutive Wednesdays in June 2016.

Group members worked independently, and with the support of the artist to create their own images and text to raise awareness of the lack of safe, secure, affordable housing for people leaving prison with an ABI and how this directly impacts on re-offending, recidivism, including breaching Community Corrections Orders and parole.

The “Three Hots and a Cot” campaign was launched by the Minister for Housing the Hon. Martin Foley as part of Homelessness Prevention Week in the first week of August 2016. All members of the Justice User Group and other project participants were invited to attend. The event was a great success, and the postcards and posters created by the Justice User Group were displayed and are still being distributed among the networks of Jesuit Social Services and the Centre for Innovative Justice.

11. THEMES AND CHALLENGES

Ongoing complexity and Issues

The lives of the members of the Justice User Group continued during the course of the project, and issues arose for them during the two-three years in which they were engaged.

The members of the Justice User group at times continued to have challenges in their lives, with housing, with their mental health, with substance abuse and so on.

At times, these issues made it difficult for some of them to participate fully in the advocacy activities of the Justice User Group. However, during these times, Jesuit Social Services worked with these participants to get the support they needed and then re-engage with the group.

Professional Boundaries and Advocacy

A further challenge working in an advocacy capacity with the men and women in the Justice User Group was assisting them to understand the boundaries of support which Jesuit Social Services could deliver.

Because the project was not engaged to provide case management to the participants involved, Jesuit Social Services had to refer to other services and agencies regarding a broad range of presenting issues. Whilst Jesuit Social Services was able to use both internal and external networks for these referrals, it was important for group members to be provided with support from services that could provide consistent, long term support.

At times this was confusing for members of the Justice User Group, but by repeating the message and the follow-up action, this role came to be understood by those involved in the project.

A further, sometimes complicating, factor in this space was balancing the project goals of advocacy and appearances with the individual support needs of the Justice User Group members. As the health and wellbeing of individual group members fluctuated during the course of the project, as other issues and stresses occurred in their lives, it was not always appropriate or respectful to approach group members with an advocacy request that might require a conference presentation, media interview or forum attendance.

The key to overcoming this hurdle was relational. As Jesuit Social Services staff developed close working relationships with all members of the Justice User Group, staff used their discretion to target group members with advocacy events when they were up to them, available and had a particular interest or lived experience of the issue being discussed. This was done being mindful of the importance of equity to ensure that all members of the Justice User Group were given opportunities to participate in advocacy activities.

12. KEY LEARNINGS – SELF-ADVOCACY WITH PARTICIPANT VOICE

There were a broad range of anticipated and unanticipated learnings for both the organisation and members of the Justice User Group.

- The capacity of many of the participants we work with is underestimated by them and often by those around them also.
- The ability of the voice of lived experience to “cut through” the noise of media and information cannot be underestimated.
- Connection to others and purpose is a critical ingredient in all human lives and the impacts of these on participant health and wellbeing is immense. Even when other significant challenges were present in the lives of the members of the Justice User Group, their ongoing involvement in the group’s work was a clear priority.
- The opportunity to enact a different identity; to be part of the solution, and not the problem was incredibly powerful, and in some cases transformative, for group members, many of whom have been viewed as “the problem” since early childhood.
- The experience of participating in the Justice User Group provided a means for re-contextualising some very painful experiences in a new way. Using the lived experience as an advocacy tool assisted some project participants to put these experiences in a place that was less painful, and assisted them to let go of past pain and loss.
- The impacts of developmental trauma were a feature of every single member of the Justice User Group. The impacts of loss, grief and trauma on young children led all the members of the Justice User Group to low self-esteem and poor mental health, learning difficulties, risk-taking and substance use and, ultimately, an ABI.

No member of the Justice User Group returned to custody during the course of the project. For some, this period has been the longest stretch on the outside since they were children.

13. CONCLUSION – REINTEGRATION IN ACTION

The evidence collected as part of the Enabling Justice research and advocacy project clearly demonstrates the significant gains to be achieved in working with participants to undertake self-advocacy and systemic change.

The participants engaged in the Justice User Group and other advocacy tasks gained new skills and understandings as a result of their experiences. They were engaged in a process which was positive, engaging, and meaningful. Importantly the process also connected them with others who shared their experiences and challenges.

All members of the Justice User Group provided positive feedback on the opportunity to be involved in the project, and to be part of a group effort to bring about change. That others in the community and service sector also shared the concerns and views of the Justice User Group was a revelation to some of the group members and helped them to feel part of something “bigger” than themselves.

PARTICIPANT INFORMATION AND CONSENT FORMS AND INTERVIEW QUESTIONS



INVITATION TO PARTICIPATE IN A RESEARCH PROJECT

PARTICIPANT INFORMATION

Project Title: The Enabling Justice Project

Investigators

Centre for Innovative Justice Rob Hulls Stan Winford Jessica Richter 03 9925 1139	RMIT University Penelope Weller (BA/LLB/MA/PhD) penelope.weller@rmit.edu.au 03 9925 5710	Jesuit Social Services Daniel Clements Kate Colvin Brigid Henley 03 9421 7600/ 9387 1233
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Dear

You are invited to participate in a research and advocacy project about the criminal justice system. Please read this sheet carefully and be confident that you understand its contents before deciding whether to participate. If you have any questions about the project, please ask one of the investigators. Participation in this project will not affect your access to JSS services in any way.

Who is involved in this research project? Why is it being conducted?

The project is conducted by the Centre for Innovative Justice, RMIT University and Jesuit Social Services. The aim of the project is to improve the way the criminal justice system responds to people with acquired brain injury. The research team wants to hear about your experiences with the criminal justice system and your views about how the system should be changed. The study has been funded through the Office of the Public Advocate.

Why have you been approached?

You have been approached because you have direct experience of how the criminal justice system responds to people with acquired brain injury and have expressed an interest in joining the Justice Users Group.

What is the project about? What are the questions being addressed?

The Justice Users Group will talk about how to change the criminal justice system. At group meetings you will be asked to talk about your experiences with the criminal justice system, including:

- how you were treated by the police, by the court and by your lawyers,
- your experience of prisons, community orders, parole and sentencing, and
- how you think the criminal justice system should be changed.

At group meetings you may also be invited to comment on educational materials, talk publicly about their experience and participate in videos. Specific permission will be sought for video appearances.

Will photographs or images be taken?

The project team may wish to take photographs or images of the Justice User Group. The team must seek your permission before taking a photo or image or using an image or photo. You have the right to request that the photo or image not be used or that any identifying features are disguised. If you agree to the image being uploaded on the internet it will remain available.

If I agree to participate, what will I be required to do?

You will be invited to participate in an interview with RMIT Researchers who will ask you questions about your experience with the criminal justice system. The information that is gathered from the interviews will be used to write an interim report. You will not be identified and the things you say will remain confidential. You will be offered \$50 reimbursement for your time.

At the end of the interview the researcher will invite you to attend the meetings of the Justice User Group. Attending the meetings is entirely voluntary. The meetings will be held at lunchtime every second month at the Bronson Centre in Brunswick. The meetings will last for about 2 hours. You will be offered lunch. You may come to the meetings and join in the discussion whenever you wish, or leave the meetings whenever you wish. If you attend a meeting you will be offered \$50 reimbursement for your time.

In the group meetings the things you say are shared with other people. You will be asked to respect the privacy of other people in the group. The group meetings will be audio taped. You may request to speak with the project team in private.

What are the possible risks or disadvantages?

You may find some of the topics or questions upsetting. If this is so, you may withdraw from the interview or the group discussion at any time. If you are concerned about your responses please discuss them with the JSS Project Worker Brigid Henley. Brigid Henley will provide immediate support and suggest appropriate follow-up, if necessary. Please do not talk about any activities that might be of interest to the police or have not yet gone to court. Any information you provide can be disclosed if (1) it is to protect you or others from harm, or (2) if it is specifically required or allowed by law.

What are the benefits associated with participation?

By participating in this project you can share your own story, hear other peoples' stories, and contribute your experience to change the criminal justice system.

What will happen to the information I provide?

The information you provide will be used to make a report about the treatment of people with acquired brain injury in the criminal justice system. The report will not use your name, or use your story in a way that other people can identify you, unless you give written permission.

You will receive a copy of the report. The report will be available to the public through open access websites and the RMIT Repository. The information you provide and any unused photographs will be kept securely at RMIT for 5 years after the publication of the report and then destroyed.

What are my rights as a participant?

- The right to withdraw from participation at any time
- The right to privacy of person information
- The right to have any unprocessed data including images withdrawn and destroyed provided it can be reliably identified
- The right to be de-identified in any photographs intended for public publication, before the point of publication
- The right to have my information kept securely.

Whom should I contact if I have any questions?

Please contact any member of the research team if you have any questions.

Yours sincerely

Rob Hulls *[signature]*

Stan Winford (CIJ) *[signature]*
Penelope Weller (RMIT) *[signature]*

Daniel Clements (JSS) *[signature]*

Kate Colvin (JSS) *[signature]*

If you have any concerns about your participation in this project, which you do not wish to discuss with the researchers, then you can contact the Ethics Officer, Research Integrity, Governance and Systems, RMIT University, GPO Box 2476V VIC 3001. Tel: (03) 9925 2251 or email human.ethics@rmit.edu.au

Please provide your written consent.

CONSENT

1. I have had the project explained to me, and I have read the information sheet

2. I agree to participate in the research project as described

3. I agree:

- to attend Justice User Group meetings
- to participate in discussions
- to have that my voice audio recorded
- to have my image taken with permission

4. I acknowledge that:

- (a) I understand that my participation is voluntary and that I am free to withdraw from the project at any time and to withdraw any unprocessed data previously supplied (unless follow-up is needed for safety).
- (b) The project is for the purpose of research. It may not be of direct benefit to me.
- (c) The privacy of the personal information I provide will be safeguarded and only disclosed where I have consented to the disclosure or as required by law.
- (d) The security of the research data will be protected during and after completion of the study. The data collected during the study may be published, and a report of the project outcomes will be publicly available. Any information which will identify me will not be used.

Participants Consent

Participant: _____ Date: _____
(Signature)

Witness:

[only required if research is assessed as more than low risk; otherwise delete]

Witness: _____ Date: _____
(Signature)

Participants should be given a photocopy of this PICF after it has been signed.

Semi-Structured Interview Questions

1. Have you ever been in contact with the police? What happened?
2. Have you been arrested?
3. Were you alone when you spoke to the police?
4. Who else was there and what did they do?
5. Have you ever had to go to court?
6. If so, what happened at court? What was it like?
7. Did you go to court by yourself or was someone with you?
8. Did you talk to any court staff or lawyers at court? What happened?
9. What was it like when your case was heard?
10. Did you plead guilty?
11. What was your sentence?
12. Have you ever been on a corrections order? What was that like?
13. Have you ever been to gaol? What happened?
14. When did you get out of prison? What was it like getting out?
15. Were you on parole when you got out of prison?
16. Have you ever been on remand (that is, where you had a court case coming up in the future, but you were not released on bail)?
17. What happened while you were on remand?
18. Did you apply for bail? And what was the outcome?
19. Have you ever been on bail? What were the conditions? What was it like?
20. What do you think about the criminal justice system?

APPENDIX 4

DRAFT EASY ENGLISH INFORMATION SHEET REGARDING THE ITP PROGRAM

This document was prepared in consultation with the Justice User Group.

DO YOU NEED SOMEONE TO BE HERE WITH YOU?

- Do you have trouble thinking clearly and answering questions?
- Do you have problems with reading and writing?
- Have you had learning problems in the past?
- Are you on DSP?
- Have you had a brain injury?
- Do you have memory problems?

YES? MAYBE YOU NEED AN INDEPENDENT THIRD PERSON

They can:

- Be with you while the police talk to you
- Break down what the police say so you understand
- Tell you what your rights are
- Help you contact a lawyer
- Help you speak to police
- Ask to stop and have a break

**TELL THE POLICE YOU NEED AN INDEPENDENT
THIRD PERSON WHEN THEY SPEAK TO YOU.**

CENTRE FOR INNOVATIVE JUSTICE

The Centre for Innovative Justice (the CIJ) was established by RMIT University in October 2012. RMIT is a global university focused on creating solutions that transform the future for the benefit of people and their environments.

The CIJ is dedicated to finding innovative and workable solutions to complex problems that manifest in the justice system. Our analysis is not limited to problem definition; we strive to develop practical ways to address problems. The CIJ's focus is on identifying alternatives to the traditional approaches to criminal justice, civil dispute resolution and legal service provision. Our mission is to identify strategies that take a holistic approach and address the reasons people come into contact with the justice system.

JESUIT SOCIAL SERVICES

Jesuit Social Services is a social change organisation working to build a just society where all people can live to their full potential.

We partner with community to support those most in need. We work to change policies, practices, ideas and values that perpetuate inequality, prejudice and exclusion.

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Publication design consultant – Alex Tyers, Transmission
Illustration and portraits – Oslo Davis

RECOGNITION, RESPECT AND SUPPORT :

ENABLING JUSTICE FOR PEOPLE WITH AN ACQUIRED BRAIN INJURY

Listening to people who have experience of the criminal justice system and identifying and responding to their needs is critical to developing effective responses to reducing recidivism. The Enabling Justice project asked people with an ABI what they needed when they had contact with the criminal justice system. This report captures their experiences and the three key needs they identified: recognition, respect and support.



**CENTRE FOR INNOVATIVE JUSTICE
JESUIT SOCIAL SERVICES**

