

27 September 2017

The Justice Project – Law Council of Australia
GPO Box 1989
CANBERRA ACT 2601

Dear Law Council

Jesuit Social Services welcomes the opportunity to provide feedback on the Justice Project's consultation papers regarding access to justice in Australia. We would like to submit several comments specifically responding to the issue paper on people with disability. These comments focus on the particular situation of people with acquired brain injury (ABI) who interact with the criminal justice system.

Our Enabling Justice Report

Jesuit Social Services, together with RMIT University's Centre for Innovative Justice, recently published a report entitled *Recognition, Respect and Support: Enabling Justice for People with an Acquired Brain Injury* (the Enabling Justice Report – accessible at: <https://jss.org.au/recognition-respect-and-support-enabling-justice-for-people-with-acquired-brain-injuries/>)¹. Focused on criminal justice issues confronting people with ABI, this report affirms your diagnosis regarding the obstacles that Australians with disability face in accessing justice. Listening to people who have experiences of the criminal justice system and identifying and responding to their needs is critical to developing effective responses. The Enabling Justice Report captured these experiences and identified three key needs for people with an ABI: recognition, respect and support.

Acquired brain Injury and the criminal justice system

We support your observation that people with disability tend to have a high level of interaction with the criminal justice system. Taking Victoria as an example, in 2011 Corrections Victoria reported that 42 per cent of men and 33 per cent of women (in a sample of the Victorian prison population) had been diagnosed with an ABI; this compares with just two per cent across the general population.² The extraordinary overrepresentation of people with ABI in prisons reflects a broader failure of the criminal justice system to recognise and respond to the needs of people with ABI. In fact, ABI is not well-recognised within the justice system, and the basic supports accepted as essential for people with other kinds of disability in other contexts are lacking—leaving people with ABI to fend for themselves in a system that most people without ABI would find overwhelming.

The term 'ABI' refers to a 'disability arising from any damage to the brain acquired after birth, regardless of cause'³. Causes may include traumatic head injuries (such as through assault, traffic accidents, family violence, etc.), stroke, brain infection, brain tumour and prolonged alcohol or drug use.

¹ Jesuit Social Services and RMIT University Centre for Innovative Justice (2017) *Recognition, Respect and Support: Enabling Justice for People with an Acquired Brain Injury*, <https://jss.org.au/recognition-respect-and-support-enabling-justice-for-people-with-acquired-brain-injuries/>

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, 6; http://assets.justice.vic.gov.au/corrections/resources/36d7e731-e819-4ed3-972d-269b829b952d/acquired_brain_injury_in_the_victorian_prison_system.pdf

³ Australian Institute of Health and Welfare, 'Disability in Australia: Acquired Brain Injury', Bulletin 55: 2007, 2

People affected by ABI can experience physical problems such as ‘headaches, fatigue, seizures, poor balance, visual and hearing disturbances, chronic pain and paralysis.’ Most significantly, they may also suffer ‘cognitive problems, including poor memory and concentration, reduced ability to plan and problem solve and inflexible thinking, and psychosocial/emotional problems, such as depression, emotional instability, irritability, and impulsive or inappropriate behaviour’⁴.

People with ABI form a particularly vulnerable group in our community; they are often caught up in a complex interplay of social disadvantage and disability. Commonly, people with ABI experience multiple and complex needs, such as alcohol or drug addiction, mental illness, homelessness and family violence.

The symptoms of ABI can severely impact on a person’s experience of the justice system. Having ABI can compound an already intimidating experience of the legal system, limit the ability to comply with sentencing orders and even exacerbate offending behaviour. The justice system can be daunting and difficult to navigate for those without a disability; however, for those with ABI who may struggle to engage in everyday tasks, this can be near impossible.

Key issues identified by project participants

The Enabling Justice project interviewed 21 people affected by ABI who had been in contact with the justice system in order to better understand how they experienced the system, and to identify ‘missed opportunities’ where alternative responses may have led to more positive outcomes.

For Enabling Justice project participants, feeling ignored, fearful, disrespected, confused and unsupported were remarkably common experiences. Participants described feeling:

- **Unrecognised:** That the criminal justice system was not set up to identify or accommodate their needs. As a result – particularly when they were in prison or serving sentences in the community – their ABI-related symptoms were sometimes misconstrued as ‘trouble-making’ or evidence of drug usage. Their disability was often not recognised nor consistently dealt with across various justice processes.
- **Confused:** The symptoms of ABI, together with the use of complicated legal jargon and inconsistent processes, made the justice system particularly confusing.
- **Unsupported:** For some participants, having ABI limited their ability to comply with community corrections orders, as these presumed a functioning memory and comprehension of relatively complex requirements. Yet the level of support they needed to understand and comply with orders was simply not available. They could not openly report their disability for fear of it being exploited by police, corrections officials or other offenders. When their disability was self-reported, it was often not taken into account nor deemed to warrant special consideration or assistance.
- **Disrespected:** Experiences of being treated disrespectfully by police, magistrates, custodial and community corrections officers caused participants to lose respect for the law and to disengage.
- **Fearful, anxious and afraid:** For many, their ABI exacerbated experiences of anxiety and vulnerability in the face of a complex justice system they could not comprehend and which did not make support available to assist them through it.

⁴ Australian Institute of Health and Welfare, ‘Disability in Australia: Acquired Brain Injury’, Bulletin 55: 2007, 3

To participate fully and equally in the justice system, people with ABI clearly need increased recognition, respect and support.

- **Recognition:** A number of interviewees felt that their disability was under-recognized within the justice system: "...not many people know, it does need more flyers, a few things put out there so people do know...Any other type of injury a person can get, ABI needs a bit more recognition too."⁵ For ABI to be recognised as a disability 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. The system must also recognise that a person with ABI may have additional communication and support needs. People working within the system must have an awareness of the causes, symptoms and common support needs of people with ABI. The system must make those supports known and available to people who have or are suspected of having ABI. Where their ABI is recognised, people can feel more confident to disclose their ABI and access services suited to their needs.
- **Respect:** Project participants reported the significance of being treated with respect in their contact with the justice system. One interviewee described an encounter with a magistrate who demonstrated sincere respect and concern: "[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."⁶ This experience motivated the person to fully cooperate with the process and make positive life changes. A more respectful justice system should take a 'solutions-focused', constructive and therapeutic approach which promotes reintegration into the community. Whether they are offenders or prisoners or victims or witnesses, people with ABI are entitled to respect. This includes treating people with dignity and enabling them to participate meaningfully in processes that affect them. In the criminal justice system, this can take many forms, including the use of plain English to ensure people with ABI can understand and meaningfully participate in their legal processes.
- **Support:** People with ABI require more support to access justice within and outside the criminal justice system. Many participants felt they were 'set up to fail' due to the lack of disability-specific services available, both within the justice system and in the broader community. A number of simple measures of support have the potential to make significant differences: "...a lot of people are just a bit confused, if they're put in the right direction, they'll change, they will."⁷ Interviewees reported insecure housing as a significant factor in their cycles of offending. Supporting people with ABI access secure housing would make a significant difference in promoting their stability, facilitating long-term support and ultimately reducing recidivism.

Key recommendations

Guided by the need to increase recognition, respect and support for people with ABI within the criminal justice system, we have identified the following recommendations as the highest priorities for future action aimed at improving access to justice for people with ABI in Australia:

⁵ Justice User Group meeting, April 2016

⁶ Participant interview dated 7 June 2016

⁷ Participant evaluation interview 7, dated 8 December 2016

- Governments in all Australian jurisdictions must take concrete steps to raise awareness about ABI, including its causes, known risk factors, symptoms and how to seek help.
- All people who work within the criminal justice system must be educated about the circumstances and needs of people with ABI, and trained to be able to recognise people with ABI and respond appropriately.
- Access to appropriate support and programs must be offered to people with ABI at the earliest possible opportunity.
- Governments in all jurisdictions must fund criminal justice advocacy and support services which offer 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.
- Written and verbal communication in the criminal justice system must be made more accessible, including by making sure that plain English is used in all documents of a legal nature as well as during court proceedings.
- Legal aid providers must structure their services to ensure that clients have adequate time to speak with a lawyer (in an appropriate manner and environment) about their case and their personal circumstances.
- Governments in all jurisdictions must increase funding for legal aid providers so as to reduce the demands on lawyers (especially duty lawyers), enabling them to spend sufficient time with clients to identify relevant personal circumstances, including ABI.
- Government must make available a larger number of properties to community support organisations that are accessible to people with an ABI and/or complex needs being released from prison.
- Governments – in partnership with community support providers – should establish housing support programs targeted towards people in contact with the criminal justice system with an ABI or complex needs living in or reintegrating back into the community.
- Governments to 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.

Jesuit Social Services respectfully asks that you take these comments and recommendations into account when drafting your final report on the access to justice needs of vulnerable Australians. I would welcome the opportunity to expand further on the matters raised in this submission.

Yours sincerely



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CEO, Jesuit Social Services