

advocacy for **inclusion**

Submission in response to the Human Rights Standards for ACT Corrective Services

About Advocacy for Inclusion

Advocacy for Inclusion acknowledges the Ngunnawal people as the traditional owners of the land on which we work.

Advocacy for Inclusion is a non-for-profit Disabled People's Organisation (DPO) community organisation in the Australian Capital Territory (ACT), Australia. We provide individual and systemic advocacy services to people with disabilities to promote their human rights and inclusion in the community. We act with and on behalf of individuals in a supportive manner, or assist individuals to act on their own behalf, to obtain a fair and just outcome for the individual concerned.

Advocacy for Inclusion works within a human rights framework and acknowledges the *United Nations Convention on the Rights of Persons with Disabilities* and is signed onto the *ACT Human Rights Act*.

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Introduction

People with disabilities are over-represented^{1 2} in the Australian criminal justice system and have some form of mental, cognitive or physical impairment that had been identified by individual assessment. The ACT is no exception. They enter the community accompanied by triple disadvantage: poverty, disability and the stigma of their ex-prisoner status.

The ACT is renowned for its implementation of the *Human Rights Act 2004*. However, as a Territory there should be an emphasis on our international obligations in conjunction with our domestic Territory legislation. Australia is a signatory of the UN Convention on the Rights of Persons with Disabilities (CRPD) and due to the over-representation of prisoners with disabilities, the ACT Government should be leading by example in its Human Rights approach to all international treaties, despite Australia's international obligations not being written into domestic Commonwealth and State and Territory legislation.

Advocacy for Inclusion welcomes and supports the Human Rights Standards for the ACT Corrective Services consultation. We hope this submission will result in the ACT Correctional Services will be more accessible and bring us closer together to Article 13 Access to Justice, of the CRPD, for people with disabilities who are currently remanded and serving sentence.

Change of terminology

'Persons found not criminally responsible due to mental impairment or diagnosed with severe mental disabilities and/or mental health conditions requiring inpatient care are transferred to mental health facilities where appropriate mental health supports and responses can be provided'.³

There is a difference between 'mental impairment/disabilities' and 'mental health conditions' and too often disability is mixed with mental health, creating difficulties in ensuring an individual receives the right support.⁴ Traditionally, yet evolving^{5 6 7}, people with cognitive disabilities and impairments have been dealt with under mental health legislation and is thought of as like a mental illness and treated as such.

The labelling of *mental impairment or severe mental disabilities* should be replaced with *high cognitive/intellectual disabilities* or *severe psychosocial disabilities* or alternative terminology.

Other terms used for and encompassing mental health impairment are 'mental health disorder', 'psychiatric disability' and 'mental illness', although they denote slightly different ways of grouping mental health conditions.

Recommendation 1: JACS and ACT Corrective Services to research and use correct terminology when referring between psychosocial disability and mental health in text.

Improving access to services and supports

In our experience, people with intellectual and cognitive disabilities are likely to remain unidentified and unsupported when they return to the community. This is most concerning when the NDIS is designed to provide *all* people with disabilities to access services and support to allow full participation in their communities and it should not be removed from prisoners exiting ACT Corrective facilities.

¹ Australian Institute of Health and Welfare (2013) *The Health of Australian Prisoners 2012*, p.3

² Baldry, E. (2014), 'Disability at the margins: limits of the law', *Griffith Law Review*, Vol.23(3), p.371

³ Human Rights Standards for the ACT Corrective Services Paper, *Detainees with severe mental health conditions*, p.4

⁴ Baldry, E. (2012) *People with Intellectual and Other Cognitive Disability in the Criminal Justice System*, Department of Families and Community Services NSW. https://www.adhc.nsw.gov.au/__data/assets/file/0003/264054/Intellectual_and_cognitive_disability_in_criminal_justice_system.pdf

⁵ NSW Law Reform Commission (2012) *People with cognitive and Mental Health Impairments in the Criminal Justice System: Diversion*, Report No. 135, NSW LRC

⁶ Rowley, M. (2014) 'Invisible Clients: People with Cognitive Impairments in the Northern Territory Court of Summary Jurisdiction', *NT Law Journal*, Vol. 2, p. 383

⁷ Dowse, L. (2009) 'Disabling Criminology: Conceptualising the Intersections of Critical Disability Studies and Critical Criminology for People with Mental Health and Cognitive Disabilities in the Criminal Justice System', *Australian Journal for Human Rights*, p.29

The National Disability Insurance Agency's decision to actively exclude prisoners from the NDIS^{8 9 10} will exacerbate an already unsettling record of the contravening the human rights of people with disabilities and lack of equal right to justice process. Whilst the NDIS is a Commonwealth model, the ACT is in the full rollout phase and Corrective Services should be working with the NDIA to ensure that the NDIS process and services available are fully pointed towards before an individual is reintegrated back into the community.

It is the understanding that the Extended ThroughCare program was designed to reduce the likelihood of individual reoffending by linking them to coordinated support services in the ACT including housing, employment, transport, health services and drug and alcohol rehabilitation, as well as providing crucial support to detainees to break cycles of previous behaviours and reintegrate into the community.¹¹

As this submission is submitted prior to the 2018-2019 ACT Budget release, it is unclear if the ThroughCare program will be continued to be fully funded from 2019 onwards. There is benefits to the program, however, there is a need for it is expand its eligibility and reach in terms of vulnerability, which largely include people with disabilities, to ensure those most vulnerable of reoffending are placed as priority.

Recommendation 2: ACT Corrective Services to reevaluate eligibility to Throughcare Program to ensure people with disabilities leaving ACT Corrective Service facilities have access to the NDIS processes as a measure of integration back into the community.

In our experience, those with intellectual and cognitive disabilities are most at risk of returning to custody through the revolving door of the corrective system due to their vulnerability and lack of supports when released.

Case study 1

Jackson has a cognitive disability. He began engaging with Advocacy for Inclusion when he was in the AMC prison. He was provided individual advocacy in relation to his criminal matter which stemmed from the removal of his dogs who were his world and family. His dogs were removed by the RSPCA due to neglect by assumption.

Jackson reacted badly to his dogs being seized and was subsequently arrested by police due to unsafe behaviour. Advocacy for Inclusion works with Jackson with collaboration of Legal Aid ACT throughout the court process, assisting Jackson with navigating the court process, finding alternative accommodation and support for Jackson so he could be released from the ACT, as well as support him with his meetings with Corrective Services.

Through receiving support and engagement with his advocate, Jackson worked with addressing his aggressive behaviour and building his self-advocacy skills, as well as focusing on goals in obtaining employment, housing and regaining his driver's license.

A positive outcome has been the sense of independence to continue with Advocacy for Inclusion from individual one-on-one advocacy to attending self-advocacy courses to continue bettering himself and making choices around his behaviour and self-determination.

⁸ Baker, E. (2018) *Ex-prisoners with disability struggling to access essential services*, Canberra Times 13th May 2018: <https://www.canberratimes.com.au/national/act/ex-prisoners-with-disability-struggling-to-access-essential-services-20180511-p4zeoy.html>

⁹ Baker, E. (2018) *NDIS applications delayed for prisoners with disability: HRC*, Canberra Times 5th May 2018: <https://www.canberratimes.com.au/national/act/ndis-applications-delayed-for-prisoners-with-disability-hrc-20180505-p4zdjo.html>

¹⁰ Young, J. and Kinner, S. (2017) *Prisoners are excluded from the NDIS – here's why it matters*, The Conversation 14th March 2017: <https://theconversation.com/prisoners-are-excluded-from-the-ndis-heres-why-it-matters-73912>

¹¹ ACT Government (2017) *Post-release care program reduces re-offending rates*, Shane Rattenbury Media Release, 16th March 2017 http://www.cmd.act.gov.au/open_government/inform/act_government_media_releases/rattenbury/2017/post-release-care-program-reduces-re-offending-rates

Case Study 2

Stevie is a 30-year-old male and has a cognitive disability. He has a long history of offending through use of alcohol, drugs and violence since his youth. Stevie was consistently picked up by police when intoxicated or showing signs of being 'aggressive' in his behaviour and either arrested or placed in a cell overnight for his 'safety'.

While on remand, he sought advocacy support through Advocacy for Inclusion. The individual advocate working with Stevie supported him to repair relationships, obtain housing and disability support, begin the NDIS process and address his behaviour through personal goals and self-advocacy peer support.

In over a year, Stevie has avoided re-offending, understands basic consequences of his behaviour and bail conditions through an Easy-English format and has been attending his appointments regularly with communication.

The above case study highlights how individual advocacy can change an outcome that is beyond the reach of the individual involved, particularly when it comes to engaging with stakeholders involved. There will always be a need for some individual advocacy services as there will always be a cohort of people with disabilities who face communication barriers, low confidence and limited decision-making capacity in their lives.

Individual advocacy is a key design feature of all disability service systems to ensure that an individual is given the self-determination to participate in our society. It will ultimately not be possible for service systems to appropriately target their services without advocacy support and representation being available to those most in need of services. Nor will it be possible for service systems to ensure inclusive quality assurance and improvement processes are in place without the feedback loops created by individual and systemic advocacy practice.

In our experience, the people we have advocated for within the justice system are often not known or supported by government agencies before they go to prison, namely AMC. Through individual advocacy, Advocacy for Inclusion has advocated for people who had been released to get support when they get out of prison, including checking if they may be eligible for NDIS support.

Training for Correctional Staff

The Human Rights Standards Consultation Paper refers to staff receive training in "indigenous cultural awareness, psychosocial needs of detainees, mental health and needs of persons in a situation of vulnerability".¹²

As part the UN CRPD principles of Article 13(2), it is required that "*in order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff*".¹³ It is concerning that disability is not considered in the Human Rights Standards and if it is and under 'persons in a situation of vulnerability' or mixed with mental health, it is not clear.

Advocacy for Inclusion provide individual advocacy as well as training for government and community organisations around disability and human rights. Working in collaboration with JACS and the ACT Corrective Services, it is recommended that due to the over-representation numbers, and the lack of data and identification of disability in the prison system, that training be delivered to all correctional staff to spot and understand disability.

¹² Human Rights Standards for the ACT Corrective Services Paper, *Respect and Dignity*, p.3

¹³ UN Human Rights, UN Convention on the Rights of Persons with Disability (CRPD), *Article 13: Access to Justice*, para.2
<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-13-access-to-justice.html>

Recommendation 3: As per the Human Rights Standards of reasonable adjustments, we recommend JACS to consider a continued working collaboration and partnership in Advocacy for Inclusion to work with prisoners with disabilities upon release and to provide staff training to ACT Correctives Services.

Data Collection

There is a need for data collection to be increased in the ACT Corrective Services. There is a need for data information on how many people with disabilities are in the ACT Corrective Services to ensure that policy implementation and consultation between both JACS, the Office for Disability and community advocacy organisations is transparent.

Article 31 of the CRPD – statistics and data collection – requires that “*States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention*”.¹⁴ Statistics and data collection should be used to identify and address the barriers experienced by people with disabilities in exercising their human rights, and data should be disseminated to people with disabilities within the Corrective Services.

Recommendation 4: Article 31 of the CRPD – statistics and data collection – must be engaged by JACS. It must be included in the Human Rights Standards and reflected in measures through the ACT Corrective Services.

Due to the short-funding of advocacy organisation, there is cost benefits and savings solutions available that can be useful in informing effective correctional policy and practice, particularly for people with disabilities in the prison system. We recommend that JACS invest in estimating the wider costs or savings associated with pathways through imprisonment that may include expanding the services of ThroughCare to accommodate a wider range of people with cognitive and intellectual disabilities and the consideration of working in collaboration with advocacy organisation who hold expertise in disability and the justice system.

Recommendation 5: JACS to consider working in collaboration with Advocacy for Inclusion to refer prisoners (who identify or suspected to have a disability) upon release to engage in individual advocacy supports in lieu with NDIS and/or self-advocacy support to engage and reintegrate into the community.

Conclusion

The NDIS exclusion is a substantial barrier between disability support and services, including advocacy and ongoing support for people with cognitive disabilities in the prison system. There is a need for collaboration, training for staff and ongoing referrals to support services that reflect the high standard held by the ACT in its renowned Human Rights approach.

Through conducting data collection and review of the numbers of people with disabilities in the ACT Corrective Services the ACT Government is flying in the face of compelling evidence that interruptions in care for people with disabilities increase the risk of poor health and re-offending.

Advocacy for Inclusion welcomes the opportunity to offer this submission and look forward to developing a collaborative partnership with ACT Corrective Services.

¹⁴ UN Human Rights, UN Convention on the Rights of Persons with Disability (CRPD), *Article 31: Statistics and Data Collection*
<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-31-statistics-and-data-collection.html>