



Council for
Intellectual Disability

Participants or just policed?

**Guide to the role of the NDIS -
people with intellectual disability
who have contact with the criminal justice system**

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The opinions, comments and/or analysis expressed in this document are those of NSW CID and do not necessarily represent the views of the Minister for Disability Reform and cannot be taken in any way as expressions of government policy.

This guide has been updated

NSW Council for Intellectual Disability produced the first edition of this guide in May 2013. NSW CID has updated the Guide in 2014 in light of the final NDIS Rules and other announcements of the NDIA about NDIS practices.

NSW CID is advocating for action on the Guide and reporting on how the NDIS is working for people with intellectual disability and criminal justice involvement.

See www.nswcid.org.au

Important note

In this Guide, the expression *criminal justice system* includes both the adult criminal justice system and the juvenile justice system.

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EXECUTIVE SUMMARY

PREVALENCE AND CHARACTERISTICS

Prevalence in the justice system

Various studies indicate that people with intellectual disability are highly represented in the criminal justice system and this is particularly clear in the juvenile justice system

Characteristics and backgrounds

Offenders with intellectual disability tend to have backgrounds of

- unstable, inappropriate accommodation placements,
- problematic family background,
- high support needs arising from factors such as drug use,
- history of poor educational experience and achievement, and
- unresolved behavioural problems.

In a major data linkage study, Baldry and others (2012) studied the profiles and pathways of a large sample of adult prisoners in NSW with cognitive disability and mental health disorders.

The study concluded:

Having a cognitive impairment predisposes persons who also experience other disadvantageous social circumstances to a greater enmeshment with the CJS [criminal justice system] early in life and persons with cognitive impairment and other disability such as mental health and AOD disorders (complex needs) are significantly more likely to have earlier, ongoing and more intense police, juvenile justice, court and corrections episodes and events. The cognitive and complex needs groups in the study have experienced low rates of disability support as children, young people and adults with Indigenous members of the cohort having the lowest levels of service and support. It is evident that those who are afforded [disability services] support do better, with less involvement in the CJS after they become clients compared with those with cognitive disability who do not receive [disability] services.

Of the overall group studied, 25% identified as Indigenous Australians, consistent with their extreme overrepresentation in the prison population.

Underlying factors for Indigenous Australians

Key factors for Indigenous people with cognitive disability and criminal justice involvement include:

- Indigenous conceptions of cognitive disability are different from Western definitions.
- Disability issues are always secondary to cultural identity. This factor and a history of poor relationships with white agencies means that many Indigenous people are very uncomfortable with mainstream disability services.
- The education system is failing all Indigenous young people. This is especially the case for Indigenous young people with cognitive disabilities or mental health problems.

Types of crimes committed

Offenders with intellectual disability tend to commit either relatively minor, but repeated offences, or a major, violent or sexual crime. The offences for which people with cognitive disability are imprisoned are overwhelmingly in the lowest severity categories

Life challenges for people with mild intellectual disability

The particular characteristics and backgrounds of offenders with intellectual disability can valuably be viewed within the context of the general day to day life challenges facing people with mild and borderline intellectual disabilities, for example:

- Difficulties in understanding and retaining complex ideas, interacting with others and engaging in everyday problem-solving.
- Low levels of income and related difficulties in accessing affordable housing.
- More at risk of exploitation - physical, financial, emotional and sexual.
- Susceptibility to chronic health conditions including mental illness and substance use problems but difficulty accessing appropriate health services.
- People desire to avoid the additional stigma of a 'disability' service system, but lack the skills necessary to enter a generic system (if one exists).

What people with intellectual disability told NSW CID

Five individuals with mild intellectual disability who have been in contact with the criminal justice system were interviewed. All of the individuals interviewed lacked access to early intervention services, had problems at school and had issues with maintaining long-term employment. All had instability in their home lives, and, at a young age, experienced homelessness. It was during these periods of homelessness that they had contact with the

criminal justice system. Lack of access to support services was a common issue for all participants.

Three of the individuals are no longer in any trouble with the law. For them, the ability to overcome challenges was only possible once they were supported by specific disability services designed to support people with intellectual disability who have been in contact with the criminal justice system.

EXISTING SERVICES – AN OVERVIEW

Section 2 of this Guide focuses on what support services are currently available around Australia to people with intellectual disability and criminal justice system involvement. The section includes:

- **Services in each State/Territory** – information provided by the government disability agency in early 2013.
- **Advocacy: its role and perspective** – including the results from a survey of public advocates/guardians and key community advocacy groups who were asked about their experiences supporting people to access services.
- **The legal framework** – a brief overview of legislative and court diversion approaches around Australia in 2013.

What emerges from this section is that, while there has been significant development in disability services for people with criminal justice involvement and other complex needs, these programs are limited in scope so that a high proportion of people are not getting the assistance they need. Further, it is very difficult for people with intellectual disability and criminal justice system involvement to access mental health and drug services. Finally, the need for advocacy greatly exceeds the availability of it.

GOOD PRACTICE GUIDE FOR THE NDIS

Section 3 of this Guide aims to provide practical information for staff in the NDIA (National Disability Insurance Agency) and disability services and for advocate/agencies trying to help a person with intellectual disability and criminal justice involvement to access the NDIS. Section 4 provides more detailed information on meeting some key needs.

Engagement with the person

People with intellectual disability and criminal justice involvement are unlikely to seek out the NDIS. Because of the interplay of their intellectual disability and their life histories, they will tend to be reluctant to identify as having a disability and seek out or trust disability services.

A skilled and ongoing process of engagement with the person will often be needed to support the person to see that their life can be more positive and that disability support services can assist with this. Often, each player in the NDIS process will need to take time to engage with the person. The Guide lists many practical strategies for engagement.

Ways the NDIS can help a person

Most of the Guide is about how a person can become a 'participant' in the NDIS and then get a funded support plan. However, there are a number of other ways that the NDIS can assist people with disability who:

- do not meet the access requirements for the scheme or
- have not yet done so or
- do not need a high level of support.

The more general roles of the NDIS may be very relevant to people with intellectual disability and criminal justice system involvement:

- Some people will need very urgent crisis support while their eligibility to become a participant and development of their participant plan are worked through
- Some people may not need a full participant plan but need active advice and referral and coordination of mainstream support.

So far, the NDIS is providing support to non-participants with disabilities through 'local area coordinators' or, in NSW, 'ability linkers'.

Linking a person to the NDIS

For people with intellectual disability and criminal justice involvement to get linked to the NDIS will require either active outreach and engagement by scheme staff such as local area coordinators and/or active linkage by people who are involved with the person already, for example a lawyer, advocate or justice system worker. Court diversion and early intervention schemes may have key roles.

Who makes decisions about getting assistance from the NDIS?

The driving philosophy behind the NDIS is about people with disability being in control of their own lives. However, the NDIS Act also includes two major qualifications on people with disability being in control in their dealings with the scheme:

- Decisions for children being made by a person with parental responsibility.
- The NDIA appointing nominees for adults in some circumstances.

Children

For young people with intellectual disability and juvenile justice involvement, there will often be challenges in working out who makes decisions about accessing the NDIS. The young person is likely to want to make their own decisions but may be ill-equipped to do so. There may be no one with parental responsibility who is well-placed to make decisions for the person. In some cases, the NDIA or other agencies will need to pursue alternative decision-making arrangements for a young person.

Nominees

The NDIA may appoint a person as 'plan nominee' for a participant in the NDIS. This can be on request of the participant or on the initiative of the agency. A plan nominee will represent the participant in dealings about the participant plan and the management of funding. Nominees have to consider the wishes of the participant and act in a way that promotes the personal and social well-being of the participant.

Whether to seek a nominee for a person with intellectual disability and criminal justice involvement will often be a difficult decision. Such individuals are usually well able to express their point of view and would usually be strongly opposed to someone else making decisions for them. On the other hand, the combination of their intellectual disability and life history will often leave the person ill-equipped to make decisions about seeking support services.

The other difficult question will be who should be the nominee. If a person has a guardian appointed under State or Territory law, the guardian would ordinarily be appointed as nominee. The NDIA can also appoint another person as nominee, even including a service provider.

Becoming a participant

If a person needs funding from the NDIS, the first step is to apply to be a participant. This is called an 'access request'. The NDIA will approve the person as a participant if, basically,

- The person is aged under 65.
- The person resides in one of the NDIS trial areas.
- The person meets the 'disability requirement' or the 'early intervention requirement'.

Meeting the disability requirement

A person meets the disability requirement if:

- a) The person has a disability attributable to one or more intellectual, cognitive, neurological, sensory or physical impairments or to impairments from a psychiatric condition.
- b) The impairments are likely to be permanent.
- c) The impairments result in substantially reduced functional capacity or psychosocial functioning in one or more of communication, social interaction, learning, mobility, self-care and self-management.
- d) The impairments affect a person's capacity for social and economic participation.
- e) The person's support needs are likely to continue for the person's lifetime.

The Productivity Commission emphasised the importance of self-management needs of people with intellectual disability who are capable in other activities such as self-care. The Commission saw self-management as covering skills such as control of your behaviour, insight, memory and decision-making. Difficulties with self-management will often be central to NDIS eligibility for a person with intellectual disability and criminal justice involvement.

The NDIA has planners who will work with people who seek to become participants. These staff members will use an NDIS assessment tool which is focused on the impact of disability on a person's functional capacity. This tool is intended to confirm that the person meets the disability requirement and find out what areas of functioning the person needs support in.

It will be vital that assessors/planners working with people with criminal justice involvement have strong interpersonal skills and experience working with this population. The assessor also may need to speak to others who know the person well to get other perspectives on the person's functioning.

As well as assessing the person's functioning, the NDIA will want evidence of diagnosis of the person's intellectual impairment. However, the NDIA appears to be clear that the main issue is functional capacity and that there will be flexibility in relation to IQ scores.

In many cases, there will be existing assessments that can feed into the NDIA assessment. The person can obtain these or ask the NDIA to obtain them. If disability is unclear, the planner may seek a professional assessment, for example from a psychologist.

There is a major question about whether the NDIA assessment tool will be adequate for people with intellectual disability and criminal justice involvement.

Another factor is that the ongoing reduced functioning of many people with criminal justice involvement may arise not just from their intellectual impairment but also from a psychiatric condition or other impairment. Therefore, it may be important to have professional evidence of these other impairments, that they are likely to be permanent and of their impact on the person's functioning.

Preparing a participant's plan

Once a person becomes a participant in the NDIS, the agency has to work with the person to prepare a participant's plan. The plan includes:

- the participant's statement of goals and aspirations including their current environmental and personal context and
- a statement of participant supports prepared with the participant and approved by the agency.

Preparing the person's statement of goals and aspirations

Due to the interplay of their disabilities and impoverished backgrounds, people with intellectual disability in contact with the criminal justice system will tend not to have clear and positive goals and aspirations.

People with criminal justice system involvement will generally need considerable and skilled support to develop a positive statement of goals and aspirations.

Children and young people in the justice system often come from chaotic family backgrounds. Preparation of a participant's goals and aspirations may be best achieved by a case conference involving a range of involved people.

The Good Lives Model is one valuable tool for assisting a person with criminal justice involvement towards positive goals and aspirations. The Good Lives Model is about assisting a person to develop a life plan where pro-social strategies for achieving basic needs replace antisocial ones.

Preparing the statement of participant supports

The NDIA planner prepares this statement with the participant. The statement has to specify:

- Any general supports that will be provided to the participant. General supports include supporting a person's access to mainstream services and community resources. NDIA local area coordinators can assist with this and coordination of different supports.
- Any 'reasonable and necessary supports' that will be funded by the NDIS - these may be specifically identified or described in general terms.
- When the plan will be reviewed.
- How the plan and any funding will be managed

Needs assessment

The NDIA needs assessment tool may not be adequate for a person with criminal justice involvement.

An adequate assessment of a person with criminal justice involvement may often require:

- a combination of tools covering issues including intelligence, communication, adaptive functioning, mental health, needs and risk assessments, or at a minimum,
- the least inappropriate tool to be complemented by input from the person and other informants plus professional judgement by an assessor with specific skills and experience with people with intellectual disability and criminal justice involvement.

Tools that are currently used in particular contexts include the *Strengths, needs, risks and goals profile* (SNRG) of the Community Justice Program (CJP) in NSW disability services.

Supports to be provided

People with intellectual disability and criminal justice involvement will often have volatile and fast changing support needs. Therefore, it will often be important for their NDIS supports to be described in general terms so that service providers can react flexibly and quickly to changes in circumstances. Funding will also need to make allowance for a person's volatility in support needs. For many people, a particular crisis may mean that their support needs escalate dramatically in the short term.

Necessary supports will often include

- Accommodation – ranging from support to obtain and maintain a tenancy through to a group home.
- Staff supports - ranging from ad hoc support when needed to deal with crises through to 24-hour supervision and support.
- Communication – assessing and addressing communication impairments.
- Behaviour support - ranging from strategies to assist a person to avoid and deal with occasional crises through to an extremely detailed and multifactorial behaviour intervention and support plan.
- Support with the criminal justice system – ranging from support to deal with a police officer who lack skills in communicating with a person with intellectual disability through to support to understand and comply with conditions on bail or a bond.
- Family issues and existing relationships - ranging from occasional support with problems through to ongoing intensive support to rebuild relationships or address risks of abuse.
- Day activities - ranging from linking the person to activities relevant to goals through to intensive support to engage in normal community activities.
- Employment – ranging from support to do voluntary work through to support to develop and sustain the skills needed for full paid employment
- Financial - ranging from occasional support with complex transactions through to a high level of day-to-day support with budgeting, bill paying and spending decisions.
- Social - ranging from linking the person to desired social activities through to intensive support so that the person can participate in activities.
- Religion - support to participate in the person's religion.
- Culture - for example, supporting an Indigenous person to maintain or enhance their links with their community and heritage

- Physical health – supporting a healthy lifestyle, to access healthcare (including an annual Medicare health assessment) and to understand and act on the health professional’s advice.
- Mental health - supporting the person to access appropriate mental health assessment and treatment.
- Alcohol and other drugs - supporting avoidance of risky use of alcohol and other drugs and, when needed, support to access and work with a drug and alcohol counsellor.
- Skill building - development of skills to lead a positive and fulfilling lifestyle.

Some of these supports will only be available through funding from the NDIS. Others may be available from mainstream agencies, but the person may still need disability support to access the mainstream service, ensure it meets the person’s needs and coordinate a range of services.

Services from mainstream agencies

The NDIS (Support for participants) Rules 2013 spell out how the agency should decide whether particular kinds of supports should be funded through the NDIS rather than a mainstream agency. Operational Guidelines spell this out further. For example:

Health (excluding mental health) – The NDIS will not be responsible for diagnosis and clinical treatment of health conditions. However, it will be responsible for ‘supports related to a person’s ongoing functional impairment and that enable the person to undertake activities of daily living’ including where they need to be delivered by health practitioners.

Mental health – The NDIS will not be responsible for clinical mental health services and mental health early interventions including clinical support for child and adolescent developmental needs.

Housing – The NDIS will be responsible for supports to maintain a tenancy and for behaviour management.

Justice – For people who are in trouble with the law but not in custody, the NDIS will provide supports on the same basis as usual. This includes support to meet court imposed conditions, for example the conditions on a bond or parole.

For people who are in custody, the NDIS will provide transition supports and may provide some other support.

With some supports, the NDIA will look at their purpose in deciding whether the NDIS or the justice system is the more appropriate provider:

- Behavioural support and development of life skills – The justice system should be responsible for supports ‘specific to offending behaviours such as programs that aim to reduce specific criminal behaviours’. The NDIS will provide supports that build the person’s abilities such as social relationships, communication and behaviour management.
- Group living to assist with activities of daily living and supervision to address behaviours of concern – The NDIS will be responsible if the primary purpose of support is activities of daily living rather than community protection or clinical treatment. The justice system should be responsible if ‘the setting is designed specifically to protect the community, prevent offending or deliver clinical services’.

The distinctions drawn in the above two dot points are cloudy and questionable. They need further consideration.

None of the rules and guidelines should prevent the NDIA from funding support that people with disabilities need to enable them to access mainstream services. For example, if a person needs drug counselling, disability support may be required to locate a counsellor and get the person to the appointment, support communication between the counsellor and the person and then support the person to remember and implement what came out of the counselling session.

Managing a participant’s funding

Management of a participant's funding includes receiving the funding from the NDIS, purchasing the supports identified in the plan and acquitting the funding to the agency. The funding can be managed by the participant, a plan nominee, a registered plan management provider or the agency. The NDIA has final say on who manages the funding.

Setting a review date

The participant's plan has to set a date by which the plan will be reviewed. In view of the often fast changing lives and goals of people with criminal justice involvement, regular reviews usually will be very important. In any case, the plan can be reviewed early when needed.

Challenging decisions of the NDIA

If a participant or their nominee is not happy with some major decisions of the NDIA, the participant may seek a review of the decision by a reviewer in the agency. If they are still unhappy with the decision, they can seek a review by the Administrative Appeals Tribunal.

IMPLICATIONS FOR NDIS DESIGN AND DEVELOPMENT

Consideration of how the NDIS will meet the needs of people with intellectual disability and criminal justice involvement raises a range of issues, as discussed in Section 5 of the Guide.

Indigenous Australians

Despite all its obvious positive features, the NDIS is a new arm of government bureaucracy and so it faces major challenges if it is to successfully engage with Indigenous communities and provide appropriate support to Indigenous Australians with disability.

Proactive outreach and engagement

If people with intellectual disability and criminal justice involvement are to have equitable access to the NDIS, the agency will need to pursue a very active process of outreach and engagement with this group and those already involved in their lives.

The importance of advocacy, and police/court support

Community advocacy groups are often the only disability organisations with whom people with criminal justice contact are involved. The further development of funding of advocacy groups is vital if people with criminal justice contact (and others alienated from bureaucratic systems) are to have equitable access to the NDIS.

There also needs to be a systematic national approach to provision of support in police interviews and court through advocacy organisations.

Preventing and responding to crises

People with intellectual disability and criminal justice involvement tend to come to the notice of disability agencies at times of sudden and great crisis. The NDIS needs to be able to respond very quickly to these situations including by providing crisis support while the process of becoming a participant is worked through.

For people with intellectual disability and criminal justice involvement, the basic support that they often want is help with week to week challenges such as understanding correspondence, an overdue electricity bill, a problem with neighbours or with a public housing authority. If the NDIS can work out a way to have support for these needs available on tap from an 'earthy' local agency, the escalation of week to week challenges into crises, including crises involving offending, may often be avoided.

Nominees, and decision makers for children

People with criminal justice involvement will often lack a suitable person involved in their lives if they need a nominee under the NDIS. Similarly, young people may not have a suitable adult available to make decisions on their behalf. The agency needs to work through approaches that address these gaps.

Assessment tools

A generic assessment tool is very unlikely to adequately identify the functional impairments and support needs of people with intellectual disability and criminal justice involvement.

Developing goals and aspirations

People with intellectual disability and criminal justice involvement generally will not find it easy to identify goals and aspirations that will lead them towards more positive and lawful lifestyles. The NDIS planning process needs to accommodate this difficulty.

Flexibility in plans

People with intellectual disability and criminal justice involvement tend to lead chaotic and fast changing lives with sudden crises. Participant's plans need to be flexible to accommodate this.

Workforce and service provider skills and support

Working with people with intellectual disability and criminal justice involvement requires skills, experience and/or professional expertise that is not widely available in the current service system. The NDIS needs to engage in a strong workforce and service development programme in relation to both its own staff and disability service providers and funds managers.

In Ageing, Disability and Home Care NSW (ADHC), there are specialist sections doing significant work to develop the skills and aptitude of disability workers generally to work with offenders and to develop and support the capacity of some NGOs to work with people with criminal justice involvement and complex needs. Specialist roles like those in ADHC need to be built into the NDIS structure around Australia. This will require considerable developmental work in some States and Territories.

Structures to meet very complex needs

Various States/Territories around Australia have developed specialist systems to meet the needs of some people with disability and very complex and challenging needs. In some States, there are specific programmes for offenders with intellectual disability and very challenging needs.

The NDIA will need to squarely and carefully consider how these sorts of programs are to be transitioned into the NDIS.

Collaboration with mainstream services

While mainstream health services have clear responsibility to provide for clinical health needs, people with intellectual disability and criminal justice involvement will often need disability support to access and work with health services. The recent Council of Australian Governments *Principles to determine the responsibilities of the NDIS and other service systems* states, 'The NDIS launch sites provide governments with an opportunity to review interactions between the NDIS and other service systems and consider any lessons arising out of a launch.'

www.coag.gov.au/node/498

The NDIS will need to have robust processes for engagement with health and other mainstream agencies in launch areas both at a systemic level and in relation to individuals.

Collaborative action will also be very important in relation to prevention of criminal justice contact and early intervention before offending patterns become entrenched. Collaboration with school education, juvenile justice and child protection agencies will be very important here.

Interaction with community protection and corrections systems

The NDIS and disability services have roles that are in some ways complementary with those of adult corrections and juvenile justice workers. A co-operative approach is vital here but disability agencies need to be very conscious that their role is not community protection but a focus on the rights, goals and aspirations of the person with disability.

This interaction is complicated by legislation in some parts of Australia, for example the Disability Act Victoria, which incorporates a community protection function into disability services.

Section 1

PREVALENCE AND CHARACTERISTICS OF PEOPLE WITH INTELLECTUAL DISABILITY IN THE JUSTICE SYSTEM

WHAT IS INTELLECTUAL DISABILITY?

Intellectual disability is the contemporary Australian term for what used to be called sub-normality, mental retardation or intellectual handicap. In the United Kingdom, the preferred term is learning disability.

Historically, the most widely accepted definition of intellectual disability was the 1983 definition of the American Association on Mental Retardation (AAMR):

Significantly sub average general intellectual functioning resulting in or associated with concurrent impairment in adaptive behaviour and manifested during the developmental period.

In essence, this definition required an IQ below 70 to 75, significant deficits in adaptive functioning and the disability to have arisen by the age of 18. Adaptive functioning covers the conceptual, social and practical skills needed in everyday life.

This definition has been used for eligibility for intellectual disability services provided by State and Territory Governments.

However, in recent decades, it has become increasingly accepted that the most important issue in terms of whether a person needs ongoing disability support is whether they have significant deficits in adaptive functioning. There should be substantial flexibility in relation to IQ levels. (Australian Government 2012; American Association on Intellectual Disability 2010, chapter 12; Moran 2013). The NDIS appears to have accepted this more flexible approach.

PREVALENCE IN THE JUSTICE SYSTEM

There is no precise data on this, partly because there is no consistent or adequate system to identify people with intellectual disability in the justice system, and partly because studies have methodological limitations, for example: in depending on people self-reporting particular attributes; in sampling processes; and in the definitions and tests used to indicate

intellectual disability. However, the data set out here provides the best indication of prevalence that is available.

The most in-depth studies of prevalence in Australia are of the juvenile justice population in NSW. The *2009 NSW Young people in custody health survey* found up to 14% of young people in custody to have a clear-cut intellectual disability based on the 1983 AAMR definition and a further 32% to have an IQ in the borderline range of intellectual disability (70-79) (Indig and others 2009). The *NSW Young people on community orders health survey 2003-2006* found 8% to have a clear-cut intellectual disability out of 42% with IQs below 80 (Kenny and others 2006).

In 1988, Hayes found 13% of the NSW prison population to have an intellectual disability (Hayes and McIlwain, 1988). The 1988 figure included 2.4% with a mild or greater disability and 10.5% borderline.

There is also a Western Australian study by Jones and Coombes (1990) where the prevalence rates varied between prisons in that state from 0-10%, including borderline disability.

In 1992 and 1995, Hayes carried out research at six NSW local courts, four in the country and two in the city. From this study, she concluded that 23.6% of persons before the courts in NSW had an IQ of less than 70. In addition, there were 14.1% with an IQ of 70-79. Of the 88 people tested in the Bourke and Brewarrina courts, Hayes said 36% had an IQ below 70 and a further 20.9% with an IQ of 70-79. Of the Bourke and Brewarrina group, 73.9% were Indigenous Australians. (Hayes 1997). There is ongoing debate regarding the applicability of even culture fair measures of intellectual disability amongst Indigenous Australians.

PROFILE OF PEOPLE WITH INTELLECTUAL DISABILITY AND CRIMINAL JUSTICE INVOLVEMENT

Characteristics and backgrounds

The Framework Report - appropriate community services in NSW for offenders with intellectual disabilities and those at risk of offending (Simpson and others 2001) includes an overview of the literature on the characteristics and backgrounds of offenders with intellectual disability. The report concluded that, for juveniles, it was the following factors, which indicated a predisposition to offending behaviour:

- unstable, inappropriate accommodation placements,
- problematic family background,
- high support needs arising from factors such as drug use,
- history of poor educational experience and achievement, and
- unresolved behavioural problems.

The report went on:

The overwhelming majority of offenders with an intellectual disability are male. They have mostly left school early at about 15 years of age, usually with a pattern of non-attendance long before that. They have severe deficits in literacy, numeracy and other skills which limit their possibility of employment. Multiple problems are common including psychiatric conditions and alcohol abuse.... the behaviour which eventually leads to arrest was usually apparent during childhood and yet was not addressed by schools or other services.

People with intellectual disability have high rates of mental illness and rates are higher again amongst offenders with intellectual disability (Smith and O'Brien 2004).

In a major data linkage study, Baldry and others (2012) studied the profiles and pathways of a large sample of adult prisoners in NSW with cognitive disability and mental health disorders. In relation to prisoners with cognitive disability (defined as having an IQ below 80):

- More than two thirds had complex needs, that is, a mental health disorder and/or a substance use disorder as well as their cognitive disability.
- The average age of first police contact was 16.5, but was significantly lower for those with complex needs. Almost all had high levels of police contact both as victims and offenders.

- 16% had been in out of home care as a child with this group overwhelmingly having complex needs.
- 15% had failed public housing tenancies out of approximately 55% who had had such tenancies.
- Females had earlier and more police contact and earlier first time in custody than their male counterparts.
- The group had had an average of approximately ten hospital admissions with easily the highest primary diagnoses being mental and behavioural disorders and *'injury, poisoning and certain other consequences of external causes'*.
- Of the over 30% who had had psychiatric admissions, there was a wide range of diagnoses including particularly psychotic disorders and disorders due to drug abuse.
- Only a small proportion had received services from ADHC (NSW government disability services). Of those receiving disability services :
 - 79% had only become clients of ADHC after their intellectual disability was identified in prison.
 - Approximately 50% had experienced homelessness.
 - Once the person was receiving disability services, they had a much lower incidence of imprisonment.

Of the overall group studied, 25% identified as Indigenous Australians, consistent with their extreme overrepresentation in the prison population. Indigenous people in the study had higher rates of cognitive disability and substance use disorders than non Indigenous people. For Indigenous people, a cognitive disability was associated with lower access to disability support, earlier and more police contact, and earlier and higher rates of incarceration than non Indigenous people with a cognitive disability.

The study concluded:

Having a cognitive impairment predisposes persons who also experience other disadvantageous social circumstances to a greater enmeshment with the CJS [criminal justice system] early in life and persons with cognitive impairment and other disability such as mental health and AOD disorders (complex needs) are significantly more likely to have earlier, ongoing and more intense police, juvenile justice, court and corrections episodes and events. The cognitive and complex needs groups in the study have experienced low rates of disability support as children, young people and adults with

Indigenous members of the cohort having the lowest levels of service and support. It is evident that those who are afforded ADHC support do better, with less involvement in the CJS after they become clients compared with those with cognitive disability who do not receive ADHC services.

As noted above, the 2009 *Young people in custody health survey* (Indig and others 2011) found very high rates of intellectual disability amongst young offenders. The study also reported on the health status of young people in custody:

- 42% were overweight
- 50% had hearing loss
- 23% reported asthma
- 32% reported head injury with a loss of consciousness
- Early initiation to sex and unsafe sex were very common
- 78% were risky drinkers of alcohol
- 65% used illicit drugs at least weekly
- 87% had at least one psychological disorder
- 73% had more than one psychological disorder, and
- 60% had a history of child abuse or trauma.

Eleven percent of detainees were born outside Australia. Twenty-eight percent of non-Indigenous detainees grew up speaking a language other than English.

Fifty percent of detainees were Indigenous Australians, compared with approximately 4% of the general adolescent community in NSW. Indigenous detainees had much higher rates of histories of out of home care (38% v 17%) and of parental imprisonment (61% v 30%) compared with non-Indigenous detainees.

Indigenous people are also overrepresented in the adult prisoner population. They make up 26% of prisoners in Australia, drawn from only 2% of the population. There is a particular problem of overrepresentation of Indigenous Australians amongst people held in indefinite detention after findings of being unfit to be tried or not guilty due to mental or cognitive impairment. In the Northern Territory, all nine people on indefinite detention are Indigenous. (Sotiri 2012).

CASE STUDY

Ned is an Indigenous man with an IQ of 65. He has a history of mental illness including diagnoses of personality and behaviour disorders, schizophrenia and mental illness related to psychoactive substance use. He is from a regional town in NSW and has a number of children with his partner. Ned moved between his mother, father and other relatives' houses when young. He stopped attending school at age 13. Ned began to have regular contact with police after leaving school, accumulating numerous incidents and custody events.

As an adult Ned has sometimes been itinerate. He often has AVOs against him and constantly breaches them. He has a vicious drug habit, suffers from severe depression and often attempts suicide. He has had 53 finalised court matters, 135 police incidents and over 2,200 days in adult custody. He has been on methadone many times. He goes in and out of hospital for a range of health issues, in particular for drug and self-harm matters, nevertheless doctors refuse to schedule him under the Mental Health Act.

After involvement by an Aboriginal program worker, Ned has completed an intervention program and a course of study. He started to apply for and receive more services and support. Participation on the methadone maintenance program and treatment for drug and alcohol and psychiatric problems through Justice Health supported a change in behaviour. His subsequent psychiatric treatment through the Aboriginal Medical Service and continuation on the methadone program has led to a period of desistance from offending behaviour.

Conclusion

Nowhere does it appear that Ned's cognitive impairment is recognised by police, school education or juvenile justice or, at least if it is, it is not recorded and no action is taken to seek disability services. Ned's life course exemplifies the management role police play in controlling someone with multiple diagnoses who from birth, is deeply affected by Indigenous dispossession, disadvantage and trauma. A strong disability response to Ned earlier in life may well have provided an intervention that would have channelled him into a community support service and context. Instead, everything done for and to Ned is crisis driven.

Ned's case study is from Baldry and others (2012).

On social indicators of wellbeing, Indigenous people experience higher levels of disadvantage than any other group in Australia. As Simpson and Sotiri (2004) summarised - Life expectancy is

shorter by 20 years, infant mortality rates are twice as high, the median wage is low, unemployment is around 40%, far fewer people finish school or go on to study after school, and there is a 50% higher chance of living in 'improvised dwellings'. There are significantly higher levels of asthma, kidney disease and diabetes.

The Australian Human Rights Commission (2008) made a number of key findings in relation to Indigenous young people with cognitive disabilities or mental health problems in the criminal justice system:

- Indigenous conceptions of cognitive disability and mental illness are different from Western definitions and depend more on relationships with others and cultural explanations.
- Disability issues are always secondary to cultural identity. This means that many Indigenous people are very uncomfortable with mainstream disability and mental health services and substantial changes must be made to ensure accessibility.
- The high incidence of mental illness and cognitive disability in Indigenous young people relates to the social determinants of health, including social, economic and cultural factors.
- The education system is failing all Indigenous young people. This is especially the case for Indigenous young people with cognitive disabilities or mental health problems.
- There are a range of explanations for the overrepresentation of young people with cognitive disabilities and mental health problems in the criminal justice system. These relate to school failure, susceptibility of involvement with the criminal justice system, differential treatment in the criminal justice system (including a lack of services), that these young people are simply more likely to get caught and that they face significant socio-demographic disadvantage.
- Substance use is an intervening factor in the offending of many Indigenous young people with cognitive disabilities or mental health problems but can also be the cause of the actual disability or mental illness as well.

Simpson and Sotiri (2004) made a number of similar findings in their study on criminal justice and Indigenous Australians with cognitive disabilities, including emphasising:

- Disability is frequently acknowledged within Indigenous communities but is not necessarily named as such. It is often just accepted as part of a person's make up. It can be viewed as just one of many disadvantages facing Indigenous people.
- There is widespread mistrust of white agencies in Indigenous communities arising from the history of removal of children from Indigenous families and ongoing poor relationships with government programs.
- Cognitive disability may often be masked in Indigenous people by factors including English being a second language, hearing impairment, the immediate impact of alcohol and drugs and the impact of inadequate educational opportunities.

Types of crimes committed

In *The Framework Report*, a survey of the literature showed that offenders with intellectual disability tend to commit either relatively minor, but repeated offences, or a major, violent crime with only a low incidence for offences in the middle range of seriousness, which tend to be crimes requiring planning ability. Offences involving impulsive or unpremeditated behaviour were most common, against property (for example arson, break and enter and car theft), or against persons in general (for example assault). There is a significant incidence of sexual offences (Simpson & others 2001).

Baldry and others (2012) found that the offences for which people with cognitive disability were imprisoned were overwhelmingly in the lowest severity categories, including low level non-violent offences, traffic offences, theft and breaches of orders.

Life challenges for people with mild intellectual disability

The research on the characteristics and backgrounds of offenders with intellectual disability can valuably be viewed within the context of the general day to day life challenges facing people with mild and borderline intellectual disabilities. As Ellem & others (2012) report, this group experience many life challenges arising from their impairment and society's disabling responses to the impairment:

- Difficulties in understanding and retaining complex ideas, interacting with others and engaging in everyday problem-solving.
- High rates of loneliness.

- Less likely to be employed and low levels of income.
- Difficulties in accessing public housing and insufficient income to pay rent in the private rental market, with resultant overrepresentation among the homeless.
- More at risk of physical, financial, emotional and sexual exploitation -.
- Susceptibility to chronic health conditions including mental illness and substance use problems, but difficulty accessing appropriate health services.
- Dependency on generic services that do not cater to their needs.

Similarly, the following factors have been listed as contemporary challenges facing people with mild cognitive limitations;

- An increasingly complex, information based, and technologically demanding society.
- Less 'neighbourliness' to help people with social, commercial and governmental settings.
- Barriers related to cognitive limitations are less likely to be 'accommodated' than barriers to physical limitations.
- Changes in public policies that affect low-income, unemployed, and homeless people have a disproportionately negative effect on individuals with cognitive limitations.
- Any changes to existing support programmes cause gaps or exclusion because it takes longer for a person with cognitive limitations to gain information, understand new options, and attempt to re-enter a programme.
- People desire to avoid the additional stigma of a 'disability' service system, but lack the skills necessary to enter a generic system (if one exists).
- Lack of access to a stable pool of knowledgeable advocates.
- Vulnerability to secondary disabilities as a result of poor or no access to health or mental health services.
- Increased stress, loneliness, anxiety, depression, victimisation, violence and maltreatment because of inadequate preparation for independent living, lack of supports, tendencies towards errors of judgment, acquiescence to perceived authority, naïveté and exploitation by others.
- Restricted employment opportunities related to limited academic skills, segregation and lack of social connections and higher rates of school dropout.
- Attraction to inclusive venues eg fast food outlets, with effects on health.

Adapted by Bruggemann from Tynschuk & others (2001).

WHAT PEOPLE WITH INTELLECTUAL DISABILITY TOLD NSW CID

This section was written by Lee-Anne Whitten of Speak Out Consulting who interviewed five people with intellectual disability who have had contact with the criminal justice system. Here, Lee-Anne reports what they said.

Method

In April 2013, five individuals with mild intellectual disability who have had contact with the criminal justice system were identified and interviewed. Contact was made through case workers from a number of legal and disability services.

Participants were asked general and specific questions about their lives including their history and how they have had contact with the criminal justice system. Participants were asked about their past and current situations in regard to accommodation, employment, health and support services. Interviewees were then asked what they like about their lives, what they would like to change, how they felt they could achieve their goals and how they access information and find out about services relevant to their needs. The participants were all asked the questions verbally and responses were written by the interviewer.

In total four men and one woman was interviewed. The participants ranged in age from 20 years old to 45 years old. The participants came from a range of backgrounds including an individual who has an Indigenous background. The participants all grew up in NSW and come from various regions including the Hunter Region, Northern Region, Southern Region and Wollongong. All participants are currently living in NSW. All the participants have been assessed as having mild intellectual disability and mental health associated illness (dual diagnosis).

Contact with the criminal justice system

All the participants have been in contact with the criminal justice system to varying degrees and have all been granted special consideration under section 32 of the Mental Health (Criminal Procedure) Act when in contact with the courts. Two of the individuals interviewed are currently in contact with the criminal justice system and have one or multiple apprehended violence orders (AVOs) against them. The other three participants have not been in any trouble with the criminal justice system for a number of years.

Male aged 22 has an AVO against him from his former partner and cannot see his 18 month old son, whilst male aged 20 is currently involved with a number of individuals who are in jail. Two of the participants, female aged 45 and male aged 31 spent significant periods of time in jail whilst the other participant had minor issues with the law never resulting in jail or a record from the courts.

Every one of the five individuals interviewed stated that the police did not understand their disability, and were treated badly by the police. One individual stated that the *'coppers treat me and my friends like dirt'* whilst another stated that *'a police woman threatened to break my leg so I threatened her back and was given an AVO'*. Alternatively all the participants stated that the courts were much better to deal with than the police and that usually, if they were granted a Section 32, the courts were responsive to helping them without placing them in jail.

Education

Commonly, school was difficult for all of the participants. All the individuals interviewed were diagnosed with mild intellectual disability during their time at school. Some of the participants were not diagnosed until their teens having previously been labelled as *'stupid'* or *'trouble'*. No person interviewed recalls any early intervention services or support during the first years of school. For the few who did receive specialist support in high school it was generally too late and consistent trouble at school ensured lack of focus on learning. One woman was eventually placed in a specialist IM class for some of her school time but stated that the IM class was *'full of naughty kids with little to no help'*.

Whilst two participants did manage to complete year 12, all of the individuals found school *'hard'*, and *'frustrating'*. Two of the participants found school so difficult that they did not manage to complete year 10, whilst the other interviewee did complete year 10 but with great difficulty.

All participants expressed problems with literacy, even those who managed to complete high school. None of the participants considered their literacy levels high enough to be able to write responses to the questions asked, and two of the participants felt their reading was not good enough to read a newspaper. This also makes using the internet difficult, and finding out information relevant to their needs challenging. Most of the people interviewed find

things out through local community centres, support workers or by *'asking people on the street'*.

Family support

Family issues were common to all of the participants. One participant, female aged 45, had a bad relationship with her father which resulted in her leaving home early. She became involved with a man with a criminal background and ended up living with him. Not being able to live at home with her mother had a direct effect on her behaviour and resulted in significant contact with the criminal justice system.

For another participant, male aged 22, sexual and physical violence in his family home resulted in leaving at a young age leading to homelessness and severe mental health problems. Another participant, male aged 28, had older siblings in trouble with the law which encouraged him to model negative behaviours. Moving around with his mother through his early school years also contributed to problems at school and subsequent issues with the law.

Challenges associated with learning difficulties also contributed to difficulties in the family home. Male aged 20 found learning challenging and spent a lot of time *'not going to school and ending up with friends from the streets'*. In spite of having a positive relationship with his mother who assists him with finding out about services or seeking legal help, he was not able to remain in the family home, leading to homelessness and perpetuating negative behaviours.

Employment

Similarly, work has been a challenge for all of the individuals interviewed. All attempted to enter work post school, but did not manage to maintain stable work. Two left school with support through an apprenticeship program, whilst the other three individuals were left to find work with no support at all.

The youngest individual interviewed is 20 years of age. He left school prior to completing year 9 and went on to learn the trade of spray painting in an apprentice program. He stated that it *'was difficult to understand everything I was being told and my boss tried to understand but I was also not behaving very well and he didn't understand that so in my 3rd year he fired me'*. This young man did not have a support worker from any specialist service, or a case worker

assisting him with his apprenticeship, in spite of being diagnosed with intellectual disability, ADHD and behaviour issues and despite leaving school prior to the completion of year 9.

Another young man aged 22 also went on to *'do a trade'* through an apprenticeship program. He too did not manage to complete his apprenticeship because he had difficulty understanding all of the instructions and made mistakes. In addition he had diagnoses of learning difficulties and significant mental health trauma disorder with no mental health support or medication thus making maintaining work difficult. This young man lacked stability in his home life having experienced physical and sexual violence, resulting in him *'moving around heaps'* making stable work very difficult as well. For both these young men, not completing their trade has resulted in poor employment prospects perpetuating criminal behaviour. As male aged 20 stated *'I am always in stupid trouble with the coppers cos I have no money'*.

Currently all five participants receive the Disability Support Pension (DSP) but rely on its income to varying degrees. Two of the participants are in work and supplement their income with DSP payments, whilst the other interviewees are not in work and rely wholly on the DSP.

One man interviewed is aged 28 and has mild/moderate intellectual disability. He did manage to complete year 12 but *'didn't manage to get any decent marks'*. Upon leaving school he tried to work but *'didn't like it'*. Due to the fact that he was assessed as having fairly significant intellectual disability he was placed in a disability day program and attends this program four days per week. This is not an individualised day service but he does enjoy most of the activities and he has friends in his day program. He did state that he would rather be working and would like to develop work skills but his day program does not allow him to learn new skills stating *'usually we just watch movies or go on excursions'*.

The 45 year old woman interviewed is in the most stable employment of all the interviewees, working five mornings per week in an office job and one afternoon per week in a legal service assisting with office work. This woman relies very minimally on DSP payments, but still requires the DSP because she is paid as a disability worker in her workplace and rates are much lower. This is due to the fact that whilst she can read her literacy skills are not very good and she can only do office jobs that do not require additional skills such as computer work.

The 28 year old Indigenous man interviewed is keen to work and get better employment. He currently collects money door to door for an Aboriginal charity but has stated that *'they do not always pay me for my work and that means I need to look for other work'*. As such in spite of having a job he is still very reliant upon the DSP. He does want to gain better employment and is working with a specialist disability employment service but has so far not been successful in attaining full time employment. This is because *'I don't have any skills and used to have a drug problem which I am now controlling with methadone'*.

All the participants not currently in stable employment expressed a desire to find work in the future and to have the opportunity to develop and learn new skills.

Accommodation

Instability regarding housing has been a common issue for all of the participants either presently or in the past, significantly contributing to their legal problems. A clear link between unstable housing and contact with the criminal justice system was found. All of the individuals interviewed were at some stage either homeless or without permanent accommodation and during this time their problems with the law increased. Three of the participants are now in very stable accommodation and have not had trouble with the law for some time

Male, aged 20, was homeless from age 17-19 years and is currently living in a men's hostel and is currently experiencing the most issues with the law of all the people interviewed. He has a number of AVOs against him and as he stated *'all my mates have either been in jail or are in jail right now'*. This young man has the least stable accommodation situation of all the individuals interviewed.

Male aged 22 had been moving around a lot since finishing school at the age of 15. Subsequently he never had stable accommodation and was never in *'one place long enough to manage my meds'*. Upon the time of interviewing he was moving in to a two year accommodation program in Sydney for vulnerable young men. The aim is to provide him with the skills to live independently and safely. He was making significant steps toward rectifying his legal problems, stabilising his mental health and eventually aims to make contact with his son.

The other people interviewed now have stable accommodation. Male aged 31 was in jail for 3.5 years and said it *'was very difficult'*. He now has stable accommodation and has been able to stay out of jail for four straight years. He stated that he is *'good at managing my own money and looking after my home. I like my home because I am free and can do what I want'*. This is a similar situation to female aged 45 who now lives with her mother since the passing of her father. Her home life is stable and she has appropriate support. Her mother has also made provision for the family home to be left to her upon her mother's passing making her future stable as well. She has not had any contact with the criminal justice system in close to nine years and has been able to maintain employment, financial affairs and positive relationships.

Access to services

All the participants have had various services assisting them. For those who have not been supported through specialist disability services, trouble with the law seems to be more prevalent. The two young males interviewed have never been supported by disability specific services. For male aged 20 the only support service in his life is a legal service for volatile and homeless youth. This service has a social worker who is attempting to help him find stable accommodation and decent support services. He is, for now, living in a hostel with no other support, resulting in ongoing volatile behaviour. For male aged 22 finally securing a place in a good accommodation service will hopefully result in stable medical support and will provide him with the skills to live independently and eventually gain employment.

The other three participants all have good disability specific services assisting them and as such they have been able to move on from their past criminal history. For these individuals finding stable accommodation, employment and managing their personal finances were all only possible with support from disability services.

For male aged 31, secure housing was only possible once linked the Community Justice Program (CJP) which is a program funded through Ageing, Disability and Home Care (ADHC). Prior to contact with this support service he had repeat misdemeanours resulting in eventual incarceration for an extended period of time. CJP is designed to support individuals with intellectual disability coming out of the criminal justice system, however for this man it was *'1.5 years out before they finally found me'*. Through his support team at CJP, provided

through a service provider in the Wollongong region, he has managed to move off heroin onto a stable methadone program. His support team ensure he takes his medication, support him with appointments, help him with daily living issues and anything else he requires. He was being supported by the service all day every day, but now he has support every day from 9am-1pm. He does feel he needs to have a support person with him all of the time but his hours were cut due to funding issues. This man is also supported through an Aboriginal men's program where he has found lots of good friends ensuring he has a community to help him stay away from negative behaviours.

Similarly, strong support from disability services helped female participant aged 45 to leave prison, secure employment and stay out of trouble for the long term. Upon leaving school she had no disability services, but once in jail she was provided with a case worker from Ageing, Disability and Home Care who put her in touch with a lawyer from a legal service specific for people with intellectual disability. This service together with a disability case worker managed to help get her out of jail, meaning she only served three months of a 10 year sentence. They then provided her with ongoing support by *'talking to me about what not to do, and always staying in contact with me and taking me to appointments. Otherwise I would still be in jail'*.

Male aged 28 also has a support worker from the CJP program who helps him with managing money. He also receives support with his finances and anything else he requires from the Guardianship Tribunal. Both of these services are disability specific services *'they really understand me and what I need'*. Consequently it has *'been ages since I have had any trouble with the coppers'*.

Conclusion

Five individuals with mild intellectual disability who have been in contact with the criminal justice system were interviewed regarding their life experience and access to services. Commonly all of the individuals interviewed did not have access to early intervention services to assist them with their disability, had problems at school and had issues with maintaining long-term employment. Similarly all of the interviewees had instability in their home lives, and, at a young age, experienced homelessness. It was during these periods of homelessness that all of those interviewed had contact with the criminal justice system.

Lack of access to support services was a common issue for the all participants. Three of the people interviewed are no longer in any trouble with the law. For all of these people the ability to overcome challenges was only possible once they were supported by specific disability services designed to support people with intellectual disability who have been in contact with the criminal justice system.

For the two youngest participants, males aged 20 and 22, current troubles with the law coincide with recent homelessness and lack of disability specific support services. One of the young men has now secured a stable accommodation service and is attempting to sort his life out. However, the 20 year old male interviewed does not have any accommodation or disability support service assisting him and he is displaying repeat behaviours.

In conclusion, links to services that understand the needs of people with mild intellectual disability would have ensured that these individuals were able to successfully learn literacy and work skills whilst still at school. Support services that understand the pressures faced by families with children with disability would have perhaps resulted in stable accommodation and not led to homelessness, which may have assisted in helping these individuals stay away from criminal behaviours.

Section 2

EXISTING SERVICES: AN OVERVIEW

This section focuses on what support services are currently available around Australia to people with intellectual disability and criminal justice system involvement.

The section includes:

- **Services in each State/Territory** – information from government disability agencies.
- **Advocacy** - its role and perspective – including the results from a 2013 survey of public advocates/guardians and key community advocacy groups who were asked about their experiences supporting people to access services.
- **The legal framework** – a brief overview of legislative and court diversion approaches in place in early 2013.

What particularly emerges from this section is that, while there has been significant development in disability services for people with criminal justice involvement and other complex needs, these programs are limited in scope so that a high proportion of people are not getting the assistance they need. Further, it is very difficult for people with intellectual disability and criminal justice system involvement to access mental health and drug services. Finally, the need for advocacy greatly exceeds the availability of it.

SERVICES IN EACH STATE/TERRITORY

The information below was provided in early 2013 by the government disability agency in each State/Territory, except in relation to NSW where the author is familiar with the service system.

AUSTRALIAN CAPITAL TERRITORY

As well as members of the target group being able to seek assistance from general disability services, the following significant initiatives have been taken.

Disability ACT

Disability ACT (DACT) works with inter-agency colleagues in the Health Directorate, the Justice and Community Safety Directorate, the Office for Children, Youth and Family Support, as well as community agencies.

DACT has a specific individual response approach to clients with a disability and a mental disorder with high and complex needs and who are at risk of criminally offending or re-offending. DACT has the capacity to support 20 clients at one time through this approach.

The individual response approach emphasises the principles of responsibility, inclusion and participation. Effective service delivery is achieved through maintaining people in their normal community setting; providing timely assessment and treatment; ensuring support for informal and professional carers; supporting social service input; and linking efficiently with specialist services where required.

Individualised Treatment Programs are developed for each person receiving these coordinated services. The 'Intervention Model' combines several proactive strategies, including assisting the individual to develop their independent living skills, making changes to the individual's environment and implementing focused treatment and support strategies.

Each area works in concert to mitigate offending behaviour of clients in the service

- DACT provides case coordination to all clients to ensure the suite of service providers and natural supports are working together and have the necessary resources to effectively support the client. A key element of this case coordination is ensuring the client has a long-term case manager when the service is withdrawn. Case coordination is supported by a professional team, which is able to work closely with stakeholders to help ensure they have the knowledge, skills and information required to discharge their roles.
- The service follows the principles of positive behaviour support in effecting behaviour change in the client. As such, the service provides direct therapeutic treatment in the form of ecological change, skills development and psychological support where necessary. In addition, the service will make arrangements with other health professionals to ensure clients gain access to other therapeutic support as deemed necessary. This may include medical doctors, psychiatrists, dieticians, occupational therapists, physiotherapists etc.
- DACT provides training for the Australian Federal Police, Alexander Maconochie Centre (Correctional Facility) and Bimberi Youth Justice Centre staff on working with vulnerable offenders and clients with mental dysfunction.

- Finally, the service manages a respite facility for clients who either cannot maintain their normal living arrangements, or who require a higher degree of support for a period of time.

Training is available for people with a disability who are in contact with DACT. Two initiatives of note include:

- The Problem Solving Program—a therapeutic educational program designed to provide individuals with intellectual disabilities with methods and skills to identify and resolve ongoing difficulties they may have experienced with various problems. The program has a particular focus on problems of a social nature, and therefore develops participant's social, interpersonal and communication abilities.
- One-to-one tutoring—training in numeracy and literacy in support of developing confidence and community access.

ACT Health

The Forensic Court Liaison Service

This service assesses individuals identified as being at risk in the court cells each morning. This can include individuals with disabilities. The Forensic Court Liaison Service then has the potential to make referrals to appropriate organisations

Mental health orders

The Mental Health (Treatment and Care) Act 1994 (the Act) includes provisions for mental health orders for people with non-mental illness mental disorders as well as for people with a mental illness by itself or co-morbid with other disabilities.

Psychiatric Treatment Orders can be made by the ACT Civil and Administrative Tribunal for people whose primary problem is a mental illness.

Also, Community Care Orders (CCO) can be made by ACAT for up to six months for people whose primary problem is a non-mental illness mental disorder. The non-mental illness mental disorders are called mental dysfunction in the Act, and include disorders such as developmental disabilities, acquired brain injuries and neurological conditions that may have associated behavioural or emotional disturbances. The ACT Care Coordinator is the statutory officer responsible for coordinating the services required for people subject to a CCO. Since

1997, when these provisions were included in the ACT Mental Health Act there have been an average of six such orders made per year.

The mental health orders may be made by the ACAT on referral from the courts, police or other elements of the justice or forensic mental health systems where people with mental illness or mental dysfunction have come into contact with those service systems.

ACT Mental Health Service for People with Intellectual Disability

Formerly known as the ACT Dual Disability Service, MHS-ID is a specialist mental health team that undertakes assessment, diagnosis and treatment of persons with an intellectual disability and a mental disorder in the community.

The involvement and assessment of the MHS-ID team is often the catalyst that facilitates cross-agency services understanding risk factors and working together to promote positive outcomes including for people at risk of offending.

The MHS-ID also provides consultation/liaison to agencies including the Australian Federal Police to assist in the decision making process around responses to crises, alternative options for persons with intellectual disability, as well as possible treatment options.

The MHS-ID team is regularly involved in the development of Multi-Agency Response Plans for consumers with complex needs.

Prison

There is no specific unit for detainees with an intellectual disability at the ACT's prison, the Alexander Maconochie Centre. While there are no specific education or behaviour programs, the existing education and rehabilitative programs are adjusted to cater for detainees with mild intellectual disabilities.

NORTHERN TERRITORY

General disability services

Clients who are referred to the Northern Territory Department of Health (DoH) Aged and Disability Program (A&DP) undergo needs assessment and a risk assessment from a Disability Coordinator.

Decisions related to service priority for those eligible for service are based on the assessment of a person's need including consideration of benefit and risk. Clients who have a high risk rating or have involvement with the criminal justice system (CJS) are given priority.

Specialist Support and Forensic Disability Program

The Specialist Support and Forensic Disability Program provides management and support to clients who have been found unfit to plead under the *Criminal Code Amendment (Mental Impairment and Unfitness for Trial) Act 2010*, and are currently on Non-Custodial or Custodial Supervision Orders (NCSO or CSO).

The program is a specialised service that provides intensive support to stabilise extreme risk behaviours across multiple environments, with a long term focus of developing a management plan that enables the least restrictive environment for the client. This is a direct service model with disability support workers directly recruited and trained. The program also has complex case managers who provide intensive and ongoing management. The responses developed for clients are generally highly individualised.

There are currently 22 clients supported within the CJS environment who receive services from either Mental Health or A&DP. 12 of these clients are managed in the community under NCSO and 10 are managed within the prison environment on CSO.

The Specialist Support and Forensic Disability Program performs duties including:

- Advises, consults with and assists prison systems to improve supports for eligible prisoners including the development and implementation of behaviour management, risk and case management plans.
- Implements generic disability training available to Corrections Officers and specific disability training to Positive Behaviour Officers within the prison.
- Assists prison staff to understand individual client needs, especially in relation to triggers for challenging behaviours, de-escalation strategies and controlling interaction with other prisoners.
- Review, research and write court reports as required.
- Assists prisoners who are eligible for A&DP services in their transition from prison by ensuring they have an identified disability coordinator and an up to date support plan.

The CEO of the DoH may issue a 'Certificate of Service' allowing services to be provided for NCSO clients at a specified place (e.g. an address in the community). This may include 24/7 support in a group home or in a single setting with high level supervision.

In Central Australia there is also a 'transitional and rehabilitation' model of accommodation support managed by A&DP that provides intensive support, supervision and structured therapeutic activities to clients who may be on court orders or in transition from a custodial setting. The aim is to progress the clients to the point they can be safely supported in a group home with less intensive support managed by a Non-Government Organisation (NGO).

Current initiatives for complex clients:

Secure Care Services

Secure Care is a specialist service providing treatment and care to high risk adults with a complex cognitive impairment, and therapeutic care to children and young people exhibiting extreme behaviours. Secure care is both a proactive service providing therapeutic interventions to people who are at risk of offending, and a service option for a small cohort of NCSO clients. The service was developed to enhance care and support options for complex, high risk clients whose needs cannot be met safely in less restrictive settings.

The Aged and Disability Program, and Mental Health Services, within the Department of Health, and the Office of Children and Families, within the Department of Education and Children's Services, have worked in partnership to develop two levels of Secure Care services,

Tier 1 and Tier 2

The *Mental Health and Related Services Amendment Act 2012* provides the legislative framework for the Tier 1 adult service. The Act provides for short term involuntary admissions for stabilisation and assessment where the person does not meet the criteria for involuntary admission on the grounds of mental illness. The person must have a significant cognitive impairment, pose a substantial danger to the community, and be likely to benefit from admission. The service is being provided through an additional six beds at the Mental Health in-patient unit at Alice Springs Hospital and five beds at Royal Darwin Hospital.

The *Disability Services Amendment Act 2012* oversees the Tier 2 adult service and allows for medium to long term involuntary treatment and care on the grounds of complex cognitive

impairment, capacity to benefit, and the person posing a substantial risk to the community. There are two Secure Care group home facilities, Yirra House in Darwin and Kwiynrpe House in Alice Springs. The group homes provide therapeutic interventions and support for up to 8 adults per facility on either a Treatment Order made by the Local Court or a Supervision Order made by the Supreme Court.

The Secure Care group homes (Tier 2 adult) in Darwin and Alice Springs are currently operational, as is the Stabilisation and Assessment unit (Tier 1 adult) at the Mental Health in-patient unit at Royal Darwin Hospital. The Stabilisation and Assessment unit in Alice Springs, and the Secure Care service for children and young people displaying extreme behaviours, are in development.

Legislative change in relation to people unfit to plead due to mental impairment

The *Criminal Code Amendment (Mental Impairment and Unfitness for Trial) Act 2010* allows the Supreme Court to authorise persons approved by the CEO of the DoH ('authorised persons'), who are not police or prison officers, to use reasonable force and assistance in order to enforce a client under a CSO or NCSO.

Supervision directions have been drafted, pending gazettal, in response to these amendments. The implementation of these supervision directions will allow for community based containment and supervision of some clients who are unfit to plead and currently considered too high risk for a community based option.

For clients who meet the criteria for involuntary treatment and care under the *Disability Services Amendment Act 2012*, the CEO of the DOH may issue a 'Certificate of Service' allowing the person to receive services at a Secure Care facility (Tier 2 adult service).

Mental Health and Behavioural Management Facility

A secure 36 bed Mental Health and Behavioural Management Facility will be built adjacent, but separate to the new Darwin Correctional Centre. This facility will be managed by the DoH and is expected to be completed in 2014/15. The facility will provide assessment, treatment and rehabilitation for people who have a mental illness or cognitive disability, who have committed offences and/or persons found not guilty due to mental impairment.

Exceptional and Complex Needs Initiative

The Exceptional and Complex Needs Initiative will target clients whose presentation is complex, high risk and involves multiple agencies but who often fall between the gaps of standard individual program eligibility, or where eligibility is in dispute. This includes clients with: an Autism Spectrum Disorder without an intellectual disability; a learning disability; or a developmental delay, e.g. suggestive of Foetal Alcohol Syndrome. In addition the model is directed to clients demonstrating high risk, anti-social, recidivist behaviour, that places themselves or others at significant risk. This initiative is currently being developed and will be piloted in Alice Springs and is expected to be implemented in 2013/2014.

NEW SOUTH WALES

As well as members of the target group being able to seek assistance from general disability services, the following significant initiatives have been taken.

Disability services (Ageing, Disability and Home Care – ADHC)

Eligibility for ADHC direct services requires a diagnosis of intellectual disability, defined as having an IQ <70, adaptive deficits in at least two functional areas, with onset prior to the age of 18 years. In addition ADHC provides funding to NGOs which provide support to people with cognitive impairment other than intellectual disability, e.g. acquired brain injury, borderline intellectual functioning.

When ADHC receives a referral for a person in contact with the criminal justice system, it recognises this as a priority service request for assessment, individual planning and referrals to appropriate service providers. The focus is on early intervention to identify risks of further contact with the criminal justice system and to address these through individual planning, implementation and review.

The Policy and Practice Team

The key focus areas of the Policy and Practice Team include:

- Establishment of sector wide policy and practice standards for the delivery of behaviour support services.
- Development of policy and practice resources for working with people in, or at risk of, contact with the criminal justice system.

- Working collaboratively to improve services for people with an intellectual disability and mental health issues.

This team developed ADHC's Justice Services Policy and Criminal Justice Resource Manual and has provided training for ADHC and NGO disability services in working with people who have criminal justice involvement.

Community Justice Program (CJP)

The CJP provides individual planning, supported accommodation and behaviour support for people with intellectual disability and very serious offending histories who have spent time in jail or juvenile justice centres. The program was funded for 200 places in the period from 2006 to 2011 and this will grow to 400 places by 2016.

The programme has a wide range of accommodation options around NSW from highly supervised group homes through to drop in support and individual funding packages. The program has been developing a range of specialised assessment and behaviour intervention tools and techniques. Approximately 35% of the residents are indigenous Australians.

Integrated Services Program (ISP)

The ISP is a joint programme led by ADHC with NSW Health and Housing. Its focus is people with complex and very challenging needs which are not capable of being met by existing disability and health services. The program provides intensive accommodation, behaviour assessment and support to its clients through a time-limited period of approximately 18 months. The program then assists to set up appropriate ongoing support arrangements in one of its partner agencies. This is an intensive programme for a small number of people - 38 people in the first four years of the programme.

Leaving Care program

This program assists young people with a disability leaving the care of the Minister for Community Services to transition to living independently in the community. Young people are given an individual needs assessment which factors in support for those in contact with the juvenile justice system.

Corrective Services

Statewide Disability Services (SDS) is a specialist service responsible for meeting the additional support needs of all offenders with disabilities. Its services include:

- Provision of specialist disability advice to staff and external stakeholders through consultation.
- Identification and assessment of offenders with disabilities.
- Provision of advice regarding policy, procedural guidelines and directives to facilitate the integrated delivery of services and programs catering for offenders with disabilities.
- Assistance with pre-release planning and the preparation of referrals to Ageing, Disability and Home Care.
- Statewide provision of training for corrective services staff.
- Oversight of four Additional Support Units (ASUs) which accommodate offenders whose disabilities require placement outside the mainstream correctional centre environment.

The SDS has developed a range of programs that mitigate offending behaviour:

- An intensive program for people with cognitive impairment and sexual offences has been run in an ASU – the Self-regulation program for sex offenders.
- A medium intensity program for non-sexual and non-violent offenders in another ASU - the self-regulation program for general offenders.
- A preparatory program in the ASUs for people who will enter the self-regulation programs.
- Components of programs that address specific skill deficits related to offending behaviour including: an awareness program about the impact of alcohol and other drugs; managing emotions; problem solving and making decisions; coping with debt; educational programs including increasing literacy and numeracy; and work related skills.

The Parolee Support Initiative (PSI) was funded by Corrective Services with the Community Restorative Centre contracted to manage the project. Partners include Family and Community Services (Housing NSW), NSW Health/Mental Health and the Probation and Parole Service. PSI operates primarily in the Liverpool/Fairfield area. The model is to provide high level, interagency support to higher risk parolees with mental health/intellectual disability issues, aiming to reduce homelessness and reduce the risk of re-offending.

Juvenile Justice

Juvenile Justice initiatives in recent years include:

- Seeking to ensure all young people entering the Juvenile Justice system are screened for physical, intellectual disabilities and mental health issues. Ongoing work with Justice Health has attempted to develop a reasonably reliable screening tool for intellectual disability.
- Assisting Youth Justice Conferencing participants with disabilities to fully participate in conference proceedings. Youth Justice Conferencing has developed and uses a checklist for convenors to identify possible disability issues so that these can be accommodated during the conference process.

Youth on Track

This new early intervention scheme targets young people (with or without disability) who are at risk of long term involvement in criminal behaviour. It includes case management and other support to address offending behaviour. It is being piloted in three areas of NSW including the Hunter where there is an NDIS launch site. See

www.youthontrack.lawlink.nsw.gov.au

Interagency forums

The Senior Officers Group on Intellectual Disability and the Criminal Justice System met from 2002 until 2011. The group attempted to improve individual responses by agencies as well as coordination between agencies. In 2008, it finalised Interagency Service Principles and Protocols setting out commitments made by the range of human service and justice agencies involved in the group.

In 2012, the group was replaced by a new Senior Officers Forum on People with Cognitive Impairments in the Criminal Justice System.

QUEENSLAND

As well as members of the target group being able to seek assistance from general disability services, the following significant initiatives have been taken.

Forensic Disability Service

The Forensic Disability Service provides involuntary detention, care and support for up to 10 people with an intellectual or cognitive disability on a forensic disability order made by the

Mental Health Court, who have been referred to the court after being charged with a serious offence. The service provides a range of evidence-based programs, designed to specifically target the offending behaviour of those in the service.

The Service has a multi-disciplinary group of staff, comprised of specialist allied health and disability support workers and medical staff, who have a range of skills, experience and qualifications.

The *Forensic Disability Act 2011* provides the legislative framework for the Forensic Disability Service including provisions protecting client rights and quality of life.

Inter-agency collaboration

The Department of Communities, Child Safety and Disability Services is consulting on a five year Queensland Disability Plan to improve access for people with a disability to mainstream and disability services. The plan will be a key mechanism for implementing the National Disability Strategy in Queensland and preparing Queensland for the introduction of the National Disability Insurance Scheme. Queensland Government Departments, including the Department of Justice and Attorney General are required under the *Disability Services Act 2006*, to develop Disability Service Plans to outline the way each department is working to improve access to government services and provide appropriate services for people with a disability. Future Disability Service Plans will detail actions for implementing the strategies and objectives of the 5 year plan, including through inter-agency collaboration.

Corrective Services

Offenders with mental illness, intellectual disability, cognitive impairment or physical disability are considered a priority group under Queensland Corrective Services' (QCS) 'Pathways to Reduced Crime' strategy. These offenders often present with challenging behaviours and can be difficult to manage. Many require additional assistance and support to cope with routine daily tasks both within custody and whilst living in the community.

Within QCS' existing processes, prisoners with an intellectual disability may have access to prison activities and programs. From 1 July 2012 to 31 March 2013, there have been 43 disability enrolments reported in Vocational Education and Training (VET) in Queensland

prisons. In addition, there have been 53 individuals with a disability that have participated in Literacy and Numeracy training in this period.

Additionally, prisoners have access to programs related to transition to the community. These include:

- increasing adaptive living and coping skills
- accessing supported accommodation, and
- specialised employment assistance.

QCS is in the process of identifying and trialling an appropriate cognitive impairment screening tool to be administered to all prisoners upon admission to a correctional centre. A trial of an Intellectual and Cognitive Impairment Screen (ICIS) tool, developed by Queensland Health is currently underway at two South-East Queensland correctional centres, to determine its appropriateness for a statewide rollout. It is anticipated that a screening tool will be implemented across all correctional centres in 2013-14.

QCS has piloted the *Bridging the Gap* program. The aim of the pilot was to provide through-care support services for prisoners who have impaired cognitive functioning including the implementation of a screening tool and referrals and liaison with specialist disability support service providers whilst in prison and during the period of reintegration into the community. This program concluded in June 2012. However, QCS has continued to contract a specialist disability non-government organisation to deliver post release support to prisoners with impaired cognitive functioning using alternative project funding. This funding will end 30 June 2013.

SOUTH AUSTRALIA

As well as members of the target group being able to seek assistance from general disability services, the following significant initiatives have been taken.

Disability services

Individualised case management services are provided through Community and Home Support SA – Disability Services. This support clients of disability services to assess, plan, implement, coordinate, monitor and evaluate the options and services required to negotiate criminal proceedings, including the interface with the police and the courts.

Exceptional Needs Unit (ENU)

The Exceptional Needs Unit (ENU) provides support to people whose needs and behaviours challenge health, human services and criminal justice systems.

ENU currently comprises three programs:

- Management Assessment Service (MAS)
- Homelessness Support Program (HSP)
- Supported Residential Facility Intake and Support Service (SRF:ISS)

Management Assessment Service (MAS)

MAS is an across-government mechanism that provides assessment and service co-ordination for people experiencing exceptional complexity and need that demands a high degree of interagency expertise and co-ordination. MAS works in collaboration with other service providers. This includes providing a continuum of responses from a consultation and advisory service, through to assessment and interagency service planning, and the Management Assessment Panel (MAP).

MAP is a non-statutory case planning and problem solving response for the most exceptional of situations. An assessment incorporating all available background information is undertaken and an interdisciplinary panel reviews the person's situation and generates possible strategies for the formulation of a community integrated service plan. All MAPs are chaired by an independent, suitably skilled person.

MAS also strongly advocates for improved service responses and interagency collaboration through referring unresolved systemic issues to the Exceptional Needs Executive Committee (ENEC). The ENEC has senior officer representation from a range of relevant government agencies including SA Health, Community Corrections, Mental Health and Substance Abuse and Housing SA.

MAS is jointly funded by SA Health and Disability SA and is located within the Department for Communities and Social Inclusion.

At any time the MAS is involved in supporting 40 individuals who are being provided with either ongoing interagency service planning or a MAP level response. In addition to this, MAS is involved in funding services for an additional 15 individuals through NGOs contracted to

provide services developed through the MAP or interagency planning processes. In total, MAS is currently involved in supporting 55 individuals. This does not include those individuals where the MAS response has the provision of expert consultative support and advice.

Generally, MAS clients will have direct involvement from the MAS team for a time limited period - typically ranging from 1 to 2 years.

Homelessness Support Program (HSP)

The HSP focuses on socially excluded homeless individuals with complex needs, especially Aboriginal people who are sleeping rough. HSP coordinates and funds packages of support around housing and living skills but it is the relevant individual agencies that work with the homeless individuals to deliver the services. HSP is not a housing provider. HSP receives referrals from non-government inner-city homeless services and mainstream government agencies. Once eligibility is determined, HSP allocates the client to a HSP funded support agency to support the person across all life domains to live in the community. To break the cycle of homelessness, HSP works with relevant agencies by engaging, identifying and supporting individual needs and responding to them when/if they change. HSP monitors and reviews the supports provided.

The program operates from a premise of assertive case management and support, and 'no retreat' to ensure that services remain in place for a client through periods of challenging behaviours, avoidance or resistance and high risk.

If an individual is ineligible for HSP assistance, HSP provides consultation and advice in relation to other agencies that may be able to assist. Currently, the HSP supports:

- 160 clients in metropolitan Adelaide and Port Augusta – this is ongoing support for as long as the person needs it.
- 120 clients per year in the Riverland area - the service is short term, usually 3 months, and is specifically targeted toward connecting rough sleepers to appropriate services.

Supported Residential Facility Intake and Support Service (SRF:ISS)

The SRFI&SS is responsible for managing and conducting SRF Entry Point (SEP) assessments for any person in receipt of a pension (or whose primary income is a government benefit) who is seeking supported accommodation in the pension-only SRF sector. A government-funded Board & Care Subsidy is paid to an SRF proprietor on behalf of the SEP Eligible person.

SRFI&SS is also responsible for assessing any referred, existing SRF resident to determine eligibility for additional supports which may include personal, social support and allied health support. Eligibility for additional Support Services is defined by an individual's level of complexity and unmet need in a range of life and support need domains. DCSI provides funding to SA Health and non-government agencies to provide additional supports and services.

The MAS has also funded some specific supported accommodation including:

- A service to support a group of six women with intellectual disability and borderline personality disorder and/or traits, who have forensic issues. The service has been developed in collaboration with Community Corrections and Mental Health Services in the Western region of Adelaide. This service model was developed as a sustainable community accommodation model with a structured and therapeutic environment. The therapeutic model is designed and delivered by Community Living Options (a non-government organisation) utilising Dialectic Behaviour Therapy, which is a treatment based on the bio-social theory of borderline personality disorder developed by Linehan (1993). Dialectic Behaviour Therapy utilises different forms of psychosocial therapy and there are four primary modes of treatment including individual psychotherapy, group skills training, telephone contact and therapist consultation.
- A service for Aboriginal men at Port Augusta. This project aims to provide culturally appropriate, safe and stable long term supported accommodation for Aboriginal men who have a range of high and complex needs. Three unrelated Aboriginal men, two from the Anangu Pitjantjatjara (APY) Lands of South Australia and one from the Flinders Ranges, live at the Port Augusta service location. All men have extremely strong and important bonds to their kinship groups with English being their second language. The service was developed as a response to the lack of culturally appropriate services available to Aboriginal people who are involved with the criminal justice system and deemed unfit to plead, yet still pose a risk to themselves or the community. The men have significant cognitive impairment eg acquired brain injury, foetal alcohol syndrome, mental illness/psychiatric disability and additionally, a history of substance misuse including alcohol and/or inhalants. These multiple layers of disadvantage and needs present a range of challenges in providing a responsive, therapeutic and culturally appropriate service. Adopting the ENU service model which requires collaborative partnerships, the service is

delivered through a partnership comprising government agencies (disability, housing, ENU) and a non-government service provider.

There are many prisoners and offenders with cognitive impairments who fall outside the service criteria for ENU and need to be managed independently of this service.

People on forensic orders

People who are sentenced under the Sentencing Act are managed under the mainstream Correctional Services' system. This is either in prison, or within the community, on parole or on a suspended sentence. If the person is an eligible Disability Services' client, a joint case management approach is taken in accordance with the Memorandum of Administrative Arrangement between the Department for Communities and Social Inclusion, Disability Services, and the Department for Correctional Services regarding the facilitation and improvement of the day to day management and standard of life experiences amongst prisoners and offenders with disability.

If a person is found not guilty by reason of mental impairment under the *Criminal Law Consolidation Act, Mental Impairment Provisions (1995)* they enter the forensic system. A custodial supervision order places the defendant into the custody of the Minister for Mental Health and Substance Abuse, who may give directions as to the appropriate custody, supervision and care of the defendant. The legislation gives the Minister broad discretion in placing a defendant in appropriate custody, supervision and care. In practice, many such people are placed in prison.

A non-custodial supervision order divides supervisory responsibilities between the Minister for Mental Health and Substance Abuse (treatment and monitoring of the mental condition) and the Parole Board (all other supervision). If the person is also eligible for disability services, the Department for Communities and Social Inclusion (DCSI), Community and Home Support SA - Disability Services will have a key role in the case management of the person.

The *Gaps In Secure Services* Project was established in December 2011 as a 12 months project to clarify the needs and numbers of people with cognitive disability under forensic orders and develop interagency pathways to further explore service alternatives for this group. There is no age limit regarding the project.

Disability Justice Plan

In December 2011, the South Australian Government committed to developing a Disability Justice Plan in consultation with people with a disability and the disability sector. The plan will include: an emphasis on early identification, diversion, and support for people with disability at risk of contact with the justice system (whether victims, witnesses, defendants, offenders); training and education for staff who interface with people with disabilities in the criminal justice system; development of more effective responses for people with disability with complex needs or heightened vulnerabilities, including the needs of women, children, Aboriginal people, people from culturally and linguistically diverse backgrounds and people with co-existing disorders such as mental illness and substance abuse.

Corrective services

All people exiting prison on parole are supervised by Community Corrections Officers, using the Enhanced Community Corrections model. The model incorporates risk, need and responsivity principles with individualised assessment to ensure appropriate level and intensity of service provision, and focusing on the dynamic needs of each individual and level of risk posed. At all times, individual and community safety is kept in mind. The model ensures that factors such as cognitive impairment and intellectual disability are taken into consideration to ensure people are supported according to their individual needs, while addressing factors that directly relate to their offending behaviour.

The Sexual Behaviours Clinic-Me (SBC-me) has run at Mt Gambier prison for 14-months as a pilot program. The program was developed in recognition that the abstract nature of some of the concepts and learning methods incorporated within standard cognitive behaviour therapy (CBT) practice meant that the existing SBC format was generally unsuitable for offenders who had intellectual disabilities. SBC-me is an evidence-based program utilising both a CBT and experiential treatment model, with the CBT aspect adapted to meet the specific learning needs of the targeted population. The pilot was delivered jointly by DCS and Disability Services staff.

The primary aim of the SBC-me is to reduce the likelihood of reoffending by sex offenders with low cognitive functioning. The program focused on the development of a new personal identity and pattern of behaviour, based on the central concept of 'old me, new me'. The

material incorporated extensive role plays, visual learning aids and interactive exercises to allow participants to practice skills and behaviours learnt during the program. The pilot concluded in November 2011 and is currently under evaluation/review.

The Aboriginal Prisoners and Offenders Support Service provides support services for Aboriginal and Torres Strait Islander people with exceptional needs and those exiting the criminal justice system. The support services include providing information and referral, prison visiting, counselling, advocacy, peer support and post release assistance. This includes accommodation and tenancy support for some individuals. It is proposed that future disability funding from the Exceptional Needs Unit be confined to accommodation and tenancy support. The service also receives Commonwealth funding for throughcare of people leaving gaol.

TASMANIA

Support for people with cognitive impairment in, or at risk of, contact with the criminal justice system is dispersed across government and non-government agencies and embedded in generic services.

Forensic Mental Health Services provide regional liaison officers to work with the courts to identify individuals with cognitive impairment, facilitate appropriate assessments and refer to relevant services and supports. A proposal to develop a court diversion process to better respond to this population is currently being progressed through the Department of Justice.

Persons with a cognitive disability who are found unfit to plead to charges and placed on orders under the *Criminal Justice (Mental Impairment) Act, 1999* receive supervision and case management services from regional forensic disability officers under the authority of the Chief Forensic Psychiatrist. The development and implementation of support plans to mitigate assessed forensic risk in the community is the joint responsibility of Forensic Mental Health Services and Disability & Community Services and is funded on a case by case basis.

In circumstances where the assessed risk to the community is substantial, the court may determine the individual be detained in a secure mental health facility. Tasmania does not have a secure facility specific to the needs of individuals with cognitive impairments. Orders

made under the *Criminal Justice (Mental Impairment) Act, 1999* are reviewed annually by the Forensic Tribunal but cannot be revoked without Supreme Court endorsement.

Persons with cognitive impairments who are incarcerated following being found guilty are assessed within the prison system. Those who are identified as vulnerable because of their limited capacity are housed in a therapeutic unit with support from health and welfare professionals. Pre-release planning for this group involves criminal justice, specialist disability and generic services as required.

VICTORIA

As well as members of the target group being able to seek assistance from general disability services, the following significant initiatives have been taken.

Legislation

- The *Sentencing Act 1991* provides for a Residential Treatment Order to be imposed for a person with an intellectual disability convicted of a serious offence. The person can then be detained at the Intensive Residential Treatment Program of the Disability Forensic Assessment and Treatment Service.
- Custodial and non-custodial supervision orders may be made under the *Serious Sex Offender - Detentions and Supervision Act 2009* and *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*. Disability Services may provide case management and support for people subject to these orders.
- The Disability Act 2006 provides for making of a civil order, a supervised treatment order, to enable the detention of a person with an intellectual disability who poses a significant risk of serious harm of others.

Disability Services

Disability Services (DS) provides and funds a range of specifically designed and targeted services for people with a disability in, or at risk of contact, with the criminal justice system (the client group).

Justice plans

When the court is considering a community based disposition for a person with intellectual disability, DS can be requested to provide a statement or plan of services that outlines

available disability services designed to reduce the likelihood of the person with an intellectual disability re-offending. A justice plan then can be attached to community based dispositions as a special condition. DS works collaboratively with local Community Correctional Services in developing reports to the court that recommend community based dispositions with justice plans attached, as well as working together in the implementation of those orders.

DS Criminal Justice Services

This includes:

- Assistance to function more independently in the community and reduce offending behaviour.
- Consultation and training to regional and community service organisation staff. Time-limited accommodation and support while on bail.
- Crisis or emergency accommodation.
- Intensive developmental programs provided in a highly supervised and structured environment.
- Direct support and programs for people in a range of settings.
- Individual and group program interventions.

Accommodation and Therapeutic support

Disability Forensic Assessment and Treatment Service (DFATS) delivers time-limited treatment, support and residential services to the client group. The intensity of treatment and intervention provided is based on the client's assessed risk, needs and legal mandate, and clients can move between levels of service and support according to changes in their risk status.

Components of these services include non-secure and semi-secure supported accommodation, comprising two short-term houses prioritising bail applicants (10 residents), a long-term residential program (5 residents) and a residential treatment facility (14 residents).

Key components include:

- Intensive Residential Treatment program (IRTP): provides assessment, treatment and residential services in a secure facility and is the most intensive level of service delivery

offered to people with a disability. Admission to the IRTP is mandated by s.152 of the Disability Act 2006 which ensures that clients meet a range of criteria and orders before being accepted into the program. A new treatment model was implemented in 2011 which is underpinned by the Good Lives Model.

- Community based treatment program - provides specialist treatment services for people in a range of settings including those residing in community-based settings.
- Prison Program - a range of activities such as maintaining a prisoner's support networks including linkages with regional case management.
- Playing an active role in pre-release planning in close partnership with DS regional case managers and co-facilitating clinical support sessions – offence-specific and offence-related and maintaining up-to-date information about the profile of Victorian prisoners with a disability and their expected release dates.
- Dual disability clinic - responds to a recognised need for prevention, intervention and collaborative responses for people with dual diagnoses involved in the criminal justice system.

Accommodation and therapeutic support services are also delivered by CSOs, for 36 people. The Australian Community Support Organisation (ACSO) provides statewide support services to people involved in the criminal justice system, including a number of residential units which support clients with an intellectual disability. It also delivers a Problematic Sexual Behaviour Service for individuals over 12 years of age who have an intellectual disability and are at risk of committing, or have committed sex offences, to provide client assessment, intervention and secondary consultation.

Jesuit Social Services (JSS) operates a state wide residential program (Perry House) for young people within the client group who have an intellectual disability. The service focuses on the development of independent living skills from a strength based practice approach which promotes resilience.

Developing Service models

DS has placed emphasis on identifying new service models to improve service responses for the client group. Key examples include:

- New governance arrangements for the Disability Interim Justice Accommodation Service.

- A pilot supported transitional accommodation service for people exiting prison (in partnership with Corrections Victoria – CV; who hold lead as contract manager).
- Specialist adviser positions including:
 - Youth Justice Senior Disability Adviser position that delivers consultation and training, and drives collaborative practice across YJ and DS (partnership between DS and Children Youth and Families Divisions).
 - DS Prison Services Coordinator position that assists with the identification and coordination of supports for offenders in prison.

Office of the Senior Practitioner

Within DS, the Office of the Senior Practitioner (OSP) has a key interface with the client group and is responsible for ensuring that the rights of people subject to restrictive interventions and compulsory treatment are protected, and that appropriate standards are complied with in relation to restrictive interventions and compulsory treatment.

Action by other agencies

The client group can also access the Multiple and Complex Needs Initiative (MACNI) delivered by the DHS. Key features include review by a specialist panel, a multidisciplinary assessment service, a coordination agency and brokerage.

The *Corrections Victoria Disability Program* includes the Prison Disability Program (known as the Joint Treatment Program) that delivers a therapeutic treatment program in partnership with DS staff, Secondary Consultation, the ABI Program, Governor’s Disciplinary Hearings Support Program, Post Release Accommodation and Support and Capacity Building.

The Joint Treatment Program delivered by *Corrections Victoria* with engagement of DS staff provides a range of therapeutic treatment programs for people with a disability in the prison system.

The Independent Third Person program (ITP) operated by the Office of the Public Advocate supports people with a disability in their contact with police. The person with a cognitive disability or mental illness may be an alleged offender, victim or witness. The role of the ITP is to facilitate communication, assist the person to understand their rights and support them through the process.

New initiatives

The Department of Human Services (DHS) is undertaking a Disability Forensic Reform Project to deliver more effective responses for people with a disability in contact with the criminal justice system, and improve outcomes for the client group, and for the community. This work is being progressed across three key themes: policy/legislation, compliance/service planning and workforce/practice development.

In addition, the report from 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 was tabled on 5 March 2013.

WESTERN AUSTRALIA

As well as members of the target group being able to seek assistance from general disability services, the following significant initiatives have been taken.

Disability Services Commission

New secure centres to be built

In 2012, the WA government announced that \$18 million will be allocated to allow for the building of secure disability centres for people who are unfit to plead as a consequence of their disability. The centres will take about two years to complete, and legislation will be developed to allow the Disability Services Commission (Commission) to operate them.

Justice Coordinator

The Commission's Justice Coordinator provides a primary point of contact between the Department of Corrective Services, other criminal justice agencies, disability sector organisations and the Commission. The Justice Coordinator:

- provides consultancy advice to disability sector organisations that are supporting people with disability within the justice system.
- is the first point of contact for people who do not have an existing connection with the Commission.
- coordinates exchange of information between relevant agencies.
- facilitates joint planning and management of people with disability in custody and the community.

- provides advice and resource consultancy for staff in Commission funded and provided services who are responsible for developing support and diversion options for people interfacing with the justice system.

The Commission and Department for Corrective Services (DCS) have a *Protocol for people with intellectual disability in adult custodial services*. The Commission Justice Coordinator and DCS Coordinator, Intellectual Disability Services, are a paired resource to enable effective joint planning and management of people with intellectual disability in custodial services.

Justice Funding

Justice funding provides non-recurrent funding to assist some adults and juveniles with disability who are:

- serious and / or frequent offenders
- at risk of a custodial sentence and/or
- in the community following their release from prison.

Justice Funding is available to:

- Provide support in the community to encourage pro-social behaviour and to reduce the risk of offending behaviour; and
- Provide additional resources to agencies working with difficult offenders to assist them to identify and address offending behaviours.

The Frequent Offenders Program

This post-release support program is delivered by a community sector organisation that provides crime prevention services and programs. The program provides accommodation and mentoring support. It is open to people with cognitive impairment or intellectual disability who have individualised funding for support through the Disability Services Commission. The aims of the program are:

- To provide appropriate, stable accommodation for a small number of people with intellectual disability and/or autism who are serious and/or frequent offenders leaving prison or on community based orders.
- To bring together all relevant support and enforcement agencies to ensure coordinated planning and intervention strategies for these clients.

- To identify the person's social and developmental needs and the specific inputs required to support positive rehabilitation, a reduction in offending and community integration.
- To support the person to secure and transition to stable long term accommodation and supports.

The Intellectual Disability Diversion Program

The IDDP is a joint disability services/ corrective services program in Perth which aims to better manage adults with intellectual disability or cognitive impairment who are interfacing with the justice system by linking them to appropriate community based interventions and services. Its objectives are to:

- Reduce the rate of imprisonment.
- Reduce the level of recidivism.
- Improve the appropriateness of how people with intellectual disability and cognitive impairment are handled within the court system.
- Provide consultancy, training and support to criminal justice system officers who supervise offenders with intellectual disability and cognitive impairment.

The entry criteria are:

- Adults with an intellectual disability.
- Adults with other cognitive impairment.
- Charges that fall within the Magistrates Court.
- Person is willing to participate on the program and allow the IDDP and other agencies to share information.
- Person intends to plead guilty.

The People with Exceptionally Complex Needs (PECN) initiative

This is a whole-of-government project which aims to provide a co-ordinated service delivery response to improve the well-being and quality of life of individuals with exceptionally complex needs. The partner agencies - Disability Services Commission, Mental Health Commission, Department of Health including the Drug and Alcohol Office, Office of the Public Advocate, Department of Corrective Services and the Department of Housing – work in a co-ordinated way to better meet the specific needs of the people in the project.

The target group:

- adults (18 years of age and older) who have two or more of the following:
 - a mental illness;
 - an acquired brain injury;
 - an intellectual disability;
 - a significant substance use problem; and
- Pose a significant risk of harm to self or others; and
- Require intensive support, would benefit from receiving co-ordinated services; and
- For whom the existing system is not working as well as it should.

Young People with Exceptionally Complex Needs (YPECN)

Following on from the success of PECN, YPECN has now been developed. The program seeks to support up to 10 young people for a period of up to 2 years. Partner agencies are: Department for Child Protection, Disability Services Commission, Mental Health Commission, Department of Housing, Department of Health, Child and Adolescent Mental Health, Department of Education, Department of Corrective Services, Youth Justice, Drug and Alcohol Office, Office of the Public Advocate.

The target group comprises young people who have two or more of the following:

- A mental illness, an acquired brain injury, an intellectual disability, a significant substance abuse problem, and
- Pose a significant risk of harm to themselves or others.
- Require intensive support and would benefit from receiving coordinated services and,
- For whom the existing system is not working as it should.

Corrective Services

The Coordinator Intellectual Disability Services seeks to ensure that all relevant offenders receive the safeguards appropriate to their impaired functioning.

The Legal and Social Awareness program is a prison treatment module specifically adapted by the Department of Corrective Services. It is a basic cognitive skills program that aims to inform people with disability on why we have rules and laws in our society and the consequences of breaking those laws. Entry criteria:

- Intellectual Disability (registered with the Disability Services Commission).
- Intellectual impairment /Borderline intellectual disability.
- Acquired Brain Damage or Acquired Brain Injury.
- Autism- previously identified.

The Sex Offender program for offenders with Intellectual disability is a specially adapted sex-offender program from Victoria, written specifically for offenders with intellectual impairment.

The Transitional Accommodation and Support Services (TASS) offers transitional housing and support to people with intellectual disabilities who are re-entering the community from prison. TASS provides accommodation and case management support with a focus on risk assessment and manageability, community integration and skill development. The program provides community living skills, home management skills, and supports people to become meaningfully engaged within their community.

ADVOCACY – ITS ROLE AND PERSPECTIVE

Advocacy – its vital role

Advocacy plays a very important role for people with intellectual disability in contact with the criminal justice system. This is both advocacy by community advocacy groups and by public advocates/guardians around Australia.

People in contact with the justice system often trust and turn to community advocacy groups when they have much more cautious attitudes towards disability service providers. Some advocacy groups have specialist roles working with people in contact with the justice system, in particular the Intellectual Disability Rights Service in NSW. Public advocates/guardians often also have important roles due to their being appointed guardians of people with complex and challenging needs or providing advocacy for such individuals. For example, in June 2012, The Adult Guardian Qld had over 110 clients with current criminal legal matters.

A role akin to advocacy is supporting a person with intellectual disability in police interviews and in court. See *Supporting a person through the justice system* in Section 4 for more about

this role and some specific programs that provide this service.

The perspective of key advocacy organisations

We conducted a survey to obtain the perspectives of public and key community advocates on access to appropriate supports by people with intellectual disability and criminal justice contact.

Respondents

We received responses from advocates in each State/Territory and in most cases this included both the public advocate/guardian and a key community advocacy group.

Allan Elliott Office of the Public Advocate Victoria	Anita Phillips Public Advocate of the ACT Australian Capital Territory
John Brayley Office of the Public Advocate South Australia	Richard Bruggemann South Australian Council for Intellectual Disability South Australia
Victoria Tucker Community Living Association Queensland	Graeme Smith Public Guardian New South Wales
Taryn Harvey Developmental Disability Council of Western Australia	Alex Faraguna Intellectual Disability Rights Service New South Wales
Morrie O Connor Community Living Association Inc. Queensland	Ben Davies <i>A.C.T. Disability, Aged and Carer Advocacy Service (ADACAS)</i> Australian Capital Territory
Rebecca Thompson Advocacy Tasmania Tasmania	Ian McKinlay Aboriginal Disability Justice Campaign National/ Northern Territory
Karl Robinson Office of the Adult Guardian Queensland	

Results

Eligibility for disability services

	Yes	No
Are people in the project target group eligible for <u>government</u> disability services?	10	1
Is there any difference in relation to eligibility for <u>funded NGO</u> disability services?	5	7

Note - Further exploration of government disability services eligibility criteria adds an important rider to the above responses. At least in all mainland states, eligibility for government disability services requires an IQ score below about 70, despite the growing acceptance in recent decades that the most important issue in terms of whether a person needs ongoing disability support is whether they have significant deficits in adaptive functioning. There should be substantial flexibility in relation to IQ levels. See *What is intellectual disability?* on page 6.

Range and suitability of disability services

	Always	Usually	Sometimes	Rarely	Never
For people in the target group who are eligible for disability services, can they access an <u>adequate range</u> of disability services?		3	7	3	
For people in the target group who are eligible for disability services, can they access <u>appropriately skilled</u> disability services?		3	3	6	

	Yes	No
Are there any disability services that specialise in working with offenders?	7	5

Health services

	Always	Usually	Sometimes	Rarely	Never
Are people in the target group able to access <u>mental health services</u> when needed?			11	2	
If mental health services are provided, are they appropriate to the person's disability needs?		1	6	3	1
Are people in the target group able to access <u>alcohol and other drug services</u> when needed?		1	4	7	
If AOD services are provided, are they appropriate for a person with intellectual disability?			4	7	1

Corrective services

	Always	Usually	Sometimes	Rarely	Never
<u>In prison</u> , are people in the target group able to access programs to address their offending behaviour?			4	8	
If these services are provided, are they appropriate for a person with intellectual disability?		1		5	3
<u>In community offender services</u> , are people in the target group able to access programs to address their offending behaviour?			2	8	2
If these services are provided, are they appropriate for a person with intellectual disability?		2	2	3	4

	Yes	No
Are there <u>specialist intellectual disability behaviour services</u> in corrective services?	3	6

Juvenile justice

	Always	Usually	Sometimes	Rarely	Never
<u>In juvenile detention centres</u> , are people in the target group able to access programs to address their offending behaviour?		3	1	3	
If these services are provided, are they appropriate for a person with intellectual disability?		1	3	3	
<u>In community JJ services</u> , are people in the target group able to access programs to address their offending behaviour?		1	3	3	
If these services are provided, are they appropriate for a person with intellectual disability?		1	3	3	

	Yes	No
Are there <u>specialist intellectual disability behaviour services</u> in juvenile justice?		6

Disability advocacy

	Always	Usually	Sometimes	Rarely	Never
Is advocacy available to people in the target group when they need it?			5	5	1

	Yes	No
Are there any advocacy groups with specialist skills in working with the target group?	3	8

Key findings

The perspective of public guardians/advocates and key community advocates is that people with intellectual disability and criminal justice involvement:

- Are generally eligible for disability services, at least if they have IQs below about 70. However, they only 'sometimes' receive an adequate range of disability services and it is quite rare for those services to be appropriately skilled.
- Only 'sometimes' can access necessary mental health services and only 'sometimes' are accessed services appropriate to their needs.
- Quite rarely can access alcohol and other drug services and it is quite rare for accessed services to be appropriate.

- In prison and community offenders services, rarely can access appropriate services to address their offending behaviour. This picture may be a little more positive in juvenile justice but respondents were less confident to express a view on juvenile justice issues.
- Quite rarely can access advocacy when they need it.

The reports on service initiatives from State/Territory disability agencies are sobering when compared with the survey results and other evidence. The recent Victorian parliamentary inquiry, *Inquiry into Access to and Interaction with the Justice System by People with an Intellectual Disability and their Families and Carers – Final report* concluded, 'Access to services provided by the Department of Human Services and community organisations is often inhibited by resource constraints and eligibility criteria' (Law Reform Committee 2013). Only a small proportion of NSW prisoners with cognitive disability had received government disability services (Baldry and others 2012). The Aboriginal Disability Justice Campaign specifically commented on the situation in the Northern Territory. The ADJC acknowledged developments that have been occurring but expressed the view that 'little translates to any ground level reality for all but a few clients, the rest await future based facilities and action'.

Clearly, there has been considerable development in disability services for people with criminal justice involvement and other complex needs. However, programs remain limited in capacity and skills so that a high proportion of people with intellectual disability and criminal justice involvement are not receiving appropriate disability support.

Further, there are major problems with access to appropriate mental health and alcohol and other drug services. See further in Section 4. Corrective services appear rarely to provide appropriate services to address offending. Finally, the need for advocacy greatly exceeds the availability of it.

THE LEGAL FRAMEWORK

Approaches vary around Australia in relation to a number of issues:

Diversion from custodial sentencing options

Criminal legal frameworks usually allow:

- Charges to be dismissed in appropriate cases due to factors such as the offence being very minor and their being mitigating circumstances such as an intellectual disability.

- Non-custodial sentencing options such as people being released on a bond with conditions that they have to comply with.
 - In some States/Territories, there are specific provisions in relation to people with disability. For example:
 - In Victoria, the Sentencing Act allows a court to request Disability Services to prepare a justice plan for a person with intellectual disability. The plan outlines available disability services designed to reduce the likelihood of the person re-offending. The plan then can be attached to bond as a special condition. See Victoria above
 - In NSW, section 32 of the Mental Health (Criminal Procedure) Act 1990 allows a magistrate to dismiss a charge against a person with intellectual disability with or without conditions. Conditions often include that the person will accept support services that have been arranged.

There is also a range of court diversion programs around Australia, for example:

- Assessment and Referral Court (ARC) List, Melbourne - This specialist court list at Melbourne Magistrates' Court has been established to meet the particular needs of accused persons who have a mental illness and/or a cognitive impairment.
- South Australia - The Treatment Intervention Program (TIP) has replaced the Magistrates Court Diversion Program (MCDP) at all metropolitan Magistrates Courts. MCDP still operates at four regional courts. MCDP is a single stream program for offenders with 'mental impairment'. TIP was introduced to expand on the MCDP so that the growing issue of co-occurring mental illness and substance abuse could be addressed using evidence based practices for the treatment of substance using offenders. TIP has 3 program streams: mental impairment; co-morbid; and substance abuse.
- NSW - CREDIT (Court Referred Early Discharge into Treatment) is a program that has been successfully piloted in two local courts, including with offenders with intellectual disability. It aims to reduce re-offending by assisting participants to engage in education, treatment or rehabilitation programs and to access social welfare support. It targets participants at the highest risk of re-offending with the highest service level. CREDIT uses a brief assessment tool designed to assist program staff to identify the key factors that could form the basis of individual intervention plans. The tool is also used to identify possible cognitive impairment (for example, can't follow instructions, difficulty reading & writing, unable to effectively communicate), and/or signs of mental health impairments.
- WA -The Intellectual Disability Diversion Program – See Western Australia above.

People found unfit to be tried or not guilty due to their disabilities

Laws vary in relation to:

- Whether the person is detained indefinitely or for a maximum specified term
- Where they are detained. The usual options are prison and psychiatric hospitals. In Queensland, the Forensic Disability Act 2011 allows for some people to be detained in a specific disability facility with therapeutic programs. There is similar provision in the Victorian Disability Act.
- People being released into the community on a conditional basis.
- Review mechanisms by courts and tribunals.

See Sotiri (2012) for a detailed analysis of legislation around Australia. Also, see the information about the Northern Territory, South Australian, Tasmanian and Victorian systems under the information from those states above.

Other restriction of freedom of movement in disability accommodation

Some people with intellectual disability are subject to legal restrictions on their freedom of movement because of them placing themselves or other people at serious risk.

In some States/Territories, restrictions are imposed under the general regime of guardianship legislation. For example, in NSW, some offenders with intellectual disability are restricted (to varying degrees) to their residence to support compliance with a bond or bail, to keep the person out of trouble with the police and to promote stability in the person's life while service providers build a relationship with the person. Restrictions can only occur if they are in the interests of the person being restricted. (Simpson and others 2001)

In some States/Territories, there is specific legislation to allow for restrictions on people with disability who are a risk to themselves or others. This includes Victoria (Disability Act 2006) and Queensland (Guardianship and Administration Act 2006). There are similar prerequisites for detention in both these Acts:

- Annual orders from a tribunal
- Serious risk of harm to other people
- The least restrictive alternative is in proposed
- An appropriate behaviour plan

- The plan will benefit the person and reduce the risk
- Vic – The plan must include a process for reducing the restriction and be approved by the Senior Practitioner.
- Qld – Detention is not lawful unless the positive strategies in the plan are implemented.

In Victoria, there is an alternative similar process via criminal court sentences, parole orders and other criminal law processes.

Section 3

GOOD PRACTICE GUIDE FOR THE NDIS

This section aims to provide practical information for staff in the NDIA (National Disability Insurance Agency) and disability services and for advocate/agencies trying to help a person with intellectual disability and criminal justice involvement to access the NDIS.

Sections in red type are summaries of relevant parts of the NDIS Act, Rules and Operational Guidelines. These are all online:

- The NDIS website is at www.ndis.gov.au.
- The full NDIS Act and Rules are at www.ndis.gov.au/about-us/legislation-rules-and-government-agreements
- The Operational Guidelines are at www.ndis.gov.au/about-us-1

ENGAGEMENT WITH THE PERSON

Why is it needed?

People with intellectual disability and criminal justice involvement are unlikely to seek out the NDIS. Because of the interplay of their intellectual disability and their life histories, people will tend to be reluctant to identify as having a disability and seek out disability services. Their histories will commonly leave them with a negative view of government service systems, for example they or their families may have had negative dealings with police, child protection authorities and public housing services. They may be very used to people letting them down and so be cautious about trusting anyone. A deprived, neglected, risk-taking and offending lifestyle may be their norm so that they have no more positive alternative to which they aspire. They may have mental disorders as well as an intellectual disability.

A skilled and ongoing process of engagement with the person will often be needed to support the person to see that their life might be more positive and that disability support services can assist with this.

Strategies for engagement

1. Spend time establishing a positive and trusting relationship with the person. This may start with simply dropping in for a chat every now and then. Some issue may arise where the worker can show their usefulness, eg helping decipher a bill or helping when the police come around.
2. If the person is in custody, a worker can visit. This might be a rare time when you know where the person is from one day to the next.
3. Avoid focusing on the person's 'disability' and whether they want 'disability' services. This may be a label the person will initially reject. It usually should be avoided in the early part of the relationship. However, the person might be happy to accept help 'to keep out of gaol'.
4. Always think about communication – does he understand me, do I really understand him? Let the person's story roll out. Ask open questions. Be alert to non verbal communication. For example, aggression may mean the person is confused and anxious and so feels threatened.
5. Try to use language the person is comfortable with. It is usually best to avoid formal bureaucratic expressions like '*assessment*' and '*appointment*'.
6. Stick by the person, come back after an incident.
7. Seek to respect the person's wishes about who their key worker should be.
8. Maintain continuity of the relationship between the person and a trusted key worker. Any handover of relationship should be done slowly. However, also seek to build relationships between some other workers and the person so that they can assist when the key worker is not available and the person develops a trusting relationship with the organisation.
9. Involve any trusted people in the person's life such as family or an advocate. The person may trust an advocacy group because it is separate from government and big systems and has assisted the person in a crisis.
10. Focus first on the person's priorities irrespective of whether they seem important to the worker.
11. Investigate and address any cultural factor relevant to whether the person might accept assistance. Different cultures have different norms about who should be involved in decisions.
12. Be flexible in service delivery. For example a worker might regularly go to the person's home at a time when the person is most likely to be there and encourage the person to participate in some constructive activity.

13. Work out with the person what assistance they need to ensure attendance at appointments, for example travel training, time planning, budgeting for fares, provision of a support person.
14. Work out strategies for the person and others to use to defuse stressful situations.
15. If the person is on charges, actively involve them in the legal process, including how acceptance of support services may advantage their defence. Supporting a person through a court diversion process such as youth justice conferencing can be a great opportunity to engage. See Section 4 for more information on support of a person through the justice system.
16. Use the time when a person is subject to court conditions to establish a relationship. A person may reluctantly accept services to avoid custody or to get out on parole. If the services meet their needs, the person may stay involved after any court conditions cease.
17. Sometimes, an NDIS plan nominee or even a guardian with power to restrict the person's freedom of movement might be needed to assist or ensure some continuity of engagement. However, these should be backstops rather than first options and they are never a reason for not also making ongoing efforts to engage with the person.

Remember, engagement is a process. You need to keep building it over time rather than it being a one off step. Engagement is not complete when you finalise an NDIS participant's plan. There may be plenty of hiccups along the way when the person tells you very bluntly to go away, and you need to let them calm down and then come back.

Don't assume that a further offence or even a return to custody means engagement has failed or that the supports are not working. By all means, re-assess what is happening but do not necessarily change. Sometimes keeping on with the same strategies is important as it demonstrates to the person that you can be trusted even when things go wrong.

Who needs to engage with the person?

Often, each player in the NDIS process will need to take time to engage with the person. This may start with a local service that sees the person may benefit from the NDIS - for example, an advocacy group, a justice or health service or a school. (In the NDIS Hunter trial site, the Intellectual Disability Rights Service has already successfully supported a number of clients to become funded participants in the NDIS.) Next may be a local area coordinator and then an NDIS planner and so on.

CASE STUDY - Anxiety leads towards gaol

Natasha's anxiety and limited problem solving and communication skills regularly lead to altercations with neighbours. The police come and she reacts in a hostile way to their authoritarian manner.

An advocacy service helps Natasha with her police charges but she has been adamant she does not want other services.

Threatened with gaol, Natasha grudgingly agrees to services but it takes a long time for the caseworker to get her trust. Eventually, Natasha agrees to see a psychiatrist and a behaviour support practitioner. They provide treatment and support for her anxiety and how to improve her interactions with the neighbours and police. A vital component is having a disability worker available after hours for Natasha to ring when she is anxious. The worker is usually able to talk Natasha through the situation.

WAYS THE NDIS CAN HELP A PERSON

Most of this Section is about how a person can become a 'participant' in the NDIS and then get a funded support plan. However, there are a number of other ways that the NDIS can assist people with disability who:

- do not meet the access requirements for the scheme or
- have not yet done so or
- do not need a high level of support.

The NDIA may:

- Provide support and financial assistance to prospective participants.
- Provide general support to people with disability who are not participants. This includes support services and coordination and referral services.
- Fund other organisations to assist people with disability in a wide range of ways

The NDIA must do its best to provide information to people with disability to assist them in making informed decisions about matters relevant to the NDIS. (NDIS Act, sections 6, 13-16)

These general roles of the NDIA may be very relevant to people with intellectual disability and criminal justice system involvement:

- Some people will need very urgent crisis support while their eligibility to become a participant and development of their participant plan are worked through. In urgent cases, the NDIA needs to be ready to move very quickly to determine eligibility and prepared a participant plan. However, there will be cases where urgent support is required in the meantime.
- Some people may not need a full participant plan but need active advice and referral and coordination of mainstream support. It will be very important that the NDIA does this in a way that is sensitive to the 'self-management' problems commonly facing people with intellectual disability and criminal justice involvement. Despite the aura of confidence and understanding that many of this group may give off, they may in fact need substantial support to ensure that a referral works. For example, a staff member of the NDIA may provide the name and phone number of a budgeting service. The person may not want to show that they lack confidence to make the initial call and lack the time management skills to keep appointments.

So far, the NDIS is providing support to non-participants with disabilities through 'local area coordinators' or, in NSW, 'ability linkers' -

GATEWAY TO THE NDIS

The NDIS 'gateway' is the various ways people can contact and get assistance from the NDIS. This includes the NDIS's website, phone and email, shop fronts and local area coordinators.

Local area coordinators have roles including:

- Providing general information about the NDIS and other supports available in the general community.
- Linking people to support providers.
- Helping people to build their independence.
- Working with community organisations to build their capacity to include and meet the needs of people with disability.
- Assisting people to complete the My Access Checker and make appointments with other NDIS workers.

My Access Checker (MAC) is a quick on-line self-assessment tool that gives a person with disability or their representative an indication of whether the person is likely to be eligible to become a participant.

(Operational Guidelines on Gateway www.ndis.gov.au/about-us-1)

The NSW variant - Ability Links NSW

www.adhc.nsw.gov.au/individuals/inclusion_and_participation/ability_links_nsw

In NSW, the State Government is funding ability linkers around the State including in the NDIS Hunter trial site. The linkers' roles include:

- Assisting individuals and their families:
 - To plan their future and become more confident.
 - To build new support networks and access mainstream supports and activities.
 - To access the disability support system where needed.
- Through relationships with mainstream agencies, identifying people who are not known to the disability system and who need assistance.
- Assisting communities and mainstream services to become more inclusive of people with disability.

- Developing strong relationships with diverse communities.

In the Hunter trial site, linkers are attached to St Vincent de Paul Society and Aboriginal linkers are at Barkuma Neighbourhood Centre:

www.vinnie.org.au/ability-links-nsw

ability.links@vinnies.org.au

(02) 4905 0700

barkumanc@hotmail.com

(02) 4937 1094

The NDIA also has local area coordinators employed in the Hunter. To complement the role of ability linkers, the LACs' role is focused on people who have become NDIS participants:

- Providing participants with information, assistance and referrals.
- Maintaining relationships with participants and monitoring implementation of their plans.

Another approach in the ACT, WA and NT sites

These trial sites commence in July 2014. They will trial an approach of combining the roles of local area coordinators and the planners who work with participants to develop their participant's plans.

LINKING A PERSON TO THE NDIS

Many people with disability and parent advocates will seek out assistance from the NDIS. This is unlikely to be the case for people with intellectual disability and criminal justice involvement. For them to get linked to the scheme will require either active outreach and engagement by scheme staff and/or active linkage by people who are involved with the person already.

NDIS local area coordinators (in NSW ability linkers) should have an important role in promoting access to the NDIS by people with intellectual disability and criminal justice involvement.

People already involved in a person's life who can help link them to the NDIS may include:

- a lawyer who is representing the person
- an advocacy organisation which is assisting the person
- staff in juvenile justice or adult corrections
- staff in a public housing authority
- a general practitioner or other health worker

Court diversion and early intervention schemes may have key roles. For examples of court diversion schemes, see *The legal framework* in Section 2. For an example of an early intervention scheme for young people at risk of long term criminal behaviour, see Youth on Track. www.youthontrack.lawlink.nsw.gov.au In 2013, this scheme commenced in areas including the Hunter launch site of the NDIS.

People often will need to ‘go the extra yard’ to properly link the person to the NDIS. It will be easy for linkages of people with criminal justice involvement to break down because the person

- is apprehensive about going to an appointment
- lacks the organisational skills to do so
- does not see the benefit of NDIS assistance
- or takes some time to feel at ease with NDIS staff and so feel positive about following through on engagement with them.

The NDIA can provide financial assistance to assist a person exercise choice and control in their dealings with the NDIA. This applies to both people who have become participants and to prospective participants. (Operational Guidelines – General Conduct – Providing Support and Assistance)

WHO MAKES DECISIONS ABOUT GETTING ASSISTANCE FROM THE NDIS?

People should be supported in their dealings with the NDIS to maximise their capacity to exercise choice and control. (NDIS Act, section 17A)

The driving philosophy behind the NDIS is about people with disability being in control of their own lives and making their own decisions about the supports they should receive. This is a very important starting point for all people with disability, including people with intellectual disability and criminal justice involvement.

However, the NDIS Act also includes two major qualifications on people with disability being in control in their dealings with the scheme:

- Decisions for children being made by a person with parental responsibility.
- The NDIA appointing nominees for adults in some circumstances.

Duties of people making decisions for a person with disability

So far as practicable, people making decisions for a person with disability are required to:

- Involve the person in decision-making and consider their views.
 - Encourage the person to engage in the life of the community.
 - Take into account the person's cultural and linguistic environments and supportive relationships.
- (NDIS Act, section 5)

Children

For children (including young people up to age 18), the person or persons who have 'parental responsibility' deal with the NDIA on behalf of the child. This is so unless the NDIA is satisfied that:

- A child is capable of making their own decisions and it is appropriate that the child be allowed to do so, or
- Someone other than a person with parental responsibility should represent the child. In making this decision, the NDIA should consider any wishes of the child, the desirability of preserving family relationships and informal support networks and who is best placed to represent the child.

Usually, a child's parents have parental responsibility but this can be affected by court orders under the Family Law Act or child protection laws.

A person making decisions on behalf of a child must consider the wishes of the child and act in the best interests of the child.

(NDIS Act, sections 74-77 and NDIS (Children) Rules)

For young people with intellectual disability and juvenile justice involvement, there will often be challenges in working out who makes decisions about accessing the NDIS. The young person is likely to want to make their own decisions but the interplay of their intellectual

disability and life circumstances may mean that the young person has great difficulty understanding the advantages of accessing the NDIS and making decisions about what supports to seek.

In some cases, the young person will have someone with parental responsibility who is well-placed to make decisions for them. This might be a parent, another family member with parental responsibility under a court order or a State or Territory Minister who has parental responsibility under a child protection law.

In other cases, there may be no one with parental responsibility who is well-placed to make decisions about dealings with the NDIA. Some young people with intellectual disability and juvenile justice involvement remain under the parental responsibility of parents who would have great difficulty seeing the benefit of disability services or making decisions about them.

So far as possible, NDIA staff and other agencies involved with a young person should support parents to make decisions in the interests of the young person, and in a way that involves the young person as much as possible.

However, there will be some cases where the NDIA or other agencies need to pursue alternative decision-making arrangements for a young person. This could be by the NDIA determining that someone else in the young person's life will deal with the scheme on their behalf. Alternatively, someone may need to pursue an application under child protection laws. In NSW, it is also possible to apply for a guardianship order in relation to a young person with intellectual disability once they are aged 16.

Nominees

The NDIA may appoint a person or organisation as 'plan nominee' or 'correspondence nominee' of a participant in the NDIS. This can be on request of the participant or on the initiative of the agency.

Unless the appointment says otherwise, a plan nominee can fully represent the participant in all dealings about the participant's plan and the management of funding. However, the nominee usually may only act in relation to things that the nominee considers the participant is not capable of doing for themselves.

A correspondence nominee has a narrower role, not including decisions in relation to the participant's plan or funding.

All nominees have to consider the wishes of the participant and act in a way that promotes the personal and social well-being of the participant.

The NDIS Rules say that people with disability are presumed to have capacity to make decisions that affect their lives. Appointment of a nominee will only be justified when it is not possible for a participant to be assisted to make decisions for themselves. The NDIA has to take into account a range of factors in deciding who to appoint as nominee, including any wishes of the person, whether a proposed nominee is equipped for the role and whether there is any conflict of interest. If a person has a guardian with relevant functions appointed under State or Territory law, the guardian is presumed to be the appropriate nominee.

The nominee cannot be an NDIA staff member. However, there is no bar on appointing another service provider as nominee - either an individual or an organisation. A nominee has to avoid or manage any conflict between their interests and the interests of the participant and inform the NDIA of the conflict. Being a service provider automatically is a conflict of interest.

Nominee arrangements can be changed when needs be.
(NDIS Act, sections 78-98 and NDIS (Nominees) Rules)

Whether to seek a nominee for a person with intellectual disability and criminal justice involvement will often be a difficult decision. Such individuals are usually well able to express their point of view and would usually be strongly opposed to someone else making decisions for them. On the other hand, the combination of their intellectual disability and life history will often leave the person ill-equipped to make decisions about seeking support from the NDIS.

NDIA staff and other people trying to support a person to access the scheme will sometimes have to pursue appointment of a nominee against the wishes of the person with disability. This should be a last resort but there will be circumstances where it will be necessary.

The other difficult question will be who should be the nominee. In some cases, a family member or friend might be suited to this role or a public guardian/advocate might have been appointed by a guardianship tribunal. In many cases, this will not be so. The options may then be to seek appointment of a public guardian/advocate by a state or territory tribunal or for someone who has a service provider relationship to be appointed as nominee. This could be an employee of a disability service or some mainstream service which is assisting the person. The issue of conflict of interest would then need to be very carefully considered.

Wherever possible, the nominee should be someone with a positive relationship with the person so that the nominee is able to work in close collaboration with the person and the person is more likely to cooperate with support arrangements made by the nominee.

Whoever becomes nominee should continue to maximise the involvement in decisions of the person with disability. This is important both in principle and for the ongoing development of the person's decision-making capabilities and the likelihood that they will cooperate with supports arranged by the nominee.

From here on in this guide, readers need to be conscious that, if there is a nominee, that person may be making decisions on behalf of a participant.

BECOMING A PARTICIPANT

If a person needs funding from the NDIS, the first step is to apply to be a participant. This is called an 'access request'. The request may be made by the person, their nominee or a person with responsibility to act on behalf of a child. The NDIA will approve the person as a participant if, basically,

- The person is aged under 65.
- The person resides in one of the NDIS launch areas.
- The person meets the 'disability requirement' or the 'early intervention requirements'.

(NDIS Act, sections 18 – 27, NDIS (Becoming a Participant) Rules)

My Access Checker (MAC) is a quick on-line self-assessment tool that gives a person with disability or their representative an indication of whether the person is likely to be eligible to

be a participant. The NDIA encourages people to complete My Access Checker before making an access request. It is at www.ndis.gov.au/my-access-checker

A person's representative, including anyone authorised by the person, may submit the access request form.

Meeting the Disability Requirements

The requirements

To become a participant in the NDIA, a person must meet the 'disability requirements' or the 'early intervention requirements'.

Section 24 of the NDIS Act says that a person meets the disability requirements if:

- a) **The person has a disability attributable to one or more intellectual, cognitive, neurological, sensory or physical impairments or to impairments from a psychiatric condition.**

The NDIA will usually want 'diagnostic' evidence, and this may be supplemented by information about the person's functioning. The NDIA can help the person gather the evidence and refer the person for an assessment (Operational Guideline – Access – Disability Requirements 7-9 and Operational Guidelines – General Conduct – Providing Support and Assistance 13).

- b) **The impairments are likely to be permanent.**

The aim is to rule out cases where further medical treatment is required before permanency can be demonstrated.

- c) **The impairments result in substantially reduced functional capacity or psychosocial functioning in one or more of communication, social interaction, learning, mobility, self-care and self-management.**

Social interaction includes making friends and relationships, behaving within limits accepted by others and coping with feelings and emotions. Self management is planning and organising daily life and managing personal finances.

A person is not ruled out of the disability requirements because their impairments vary in intensity – However, the person must have substantially reduced functional capacity when their impairment 'is fully treated and stabilised', ie between acute episodes.

(Operational Guideline – Access – Disability Requirements)

An impairment results in substantially reduced functional capacity to undertake an activity if the person usually needs assistance, such as guidance, supervision or prompting to carry out the activity. (NDIS (Becoming a Participant) Rules 5.8)

d) The impairments affect the person's capacity for social and economic participation.

e) The person's support needs are likely to continue for the person's lifetime.

The NDIA says it here takes into account a person's mainstream and community supports including whether the person's support is more appropriately provided by other systems. (Operational Guideline – Access – Disability Requirements) It is questionable whether this view of the NDIA is correct.

Note that the disability requirement does not apply to some people who have been receiving support from a program that has been replaced by the NDIS. (NDIS Act section 21(2))

In deciding whether a person meets the disability requirements, the NDIA should develop a comprehensive view of the person's circumstances including by examining information provided by the person, talking with the person and (with the person's consent) family or carers and looking at an NDIA support needs assessment. Where necessary, the NDIA can request that a person have an assessment. (Operational Guideline – Access – Disability Requirements 27-30)

The Productivity Commission emphasised the importance of self-management needs of people with intellectual disability who are capable in other activities such as self care. The Commission saw self-management as covering skills such as control of your behaviour, insight, memory and decision-making (Productivity Commission, Disability Care and Support, final report pages 171 – 175). Difficulties with self-management will often be central to NDIS eligibility for a person with intellectual disability and criminal justice involvement.

How to meet the requirements – assessment tools

The NDIA may specify assessment tools for deciding whether a person meets the disability requirement and/or assessing the person's support needs. Tools must be fair and transparent and be related to areas of activity and social and economic participation in the

The NDIA has planners who work with people who seek to become participants. This staff member will use an NDIA assessment tool which is focused on the impact of disability on a person's functional capacity. The tool is intended to confirm that the person meets the disability requirement and find out in which areas of functioning the person needs support. See *Needs assessment* below.

It is vital that planners working with people with criminal justice involvement have strong interpersonal skills and experience working with this population. For example, if planners simply rely on the information the person with disability gives about their functioning, the planner is unlikely to get an accurate picture. The person will often not realise, or want to admit, their problems with functioning. The planner may need to speak to others who know the person well to get other perspectives on the person's functioning. The planner needs skills and time to establish a trusting relationship with the person - See *Engagement with the person* above.

The NDIA appears to expect that there will already be some existing documented diagnosis of disability. It is not clear what sort of diagnostic evidence is required, for example whether a full IQ assessment is needed. If disability is unclear, the planner may seek a professional assessment, for example from a psychologist.

The NDIA appears to be clear that the main issue is functional capacity and that there will be flexibility in relation to IQ scores.

Will the NDIA's assessment tools be adequate for people with intellectual disability and criminal justice involvement?

This issue will need to be watched carefully by the NDIA and those seeking to assist people to access the scheme.

The best evidence about whether a person with intellectual disability and criminal justice involvement meets the disability requirement may in fact come from the use of established, research validated tools that are normed against the general population. Reduced functional

capacity is well assessed by rigorous adaptive behaviour assessment tools, in particular the Vineland Adaptive Behaviour Scale and the Adaptive Behaviour Assessment System - Second Edition (ABAS II). These tools need to be used carefully by a psychologist who ultimately makes an assessment based on the combination of test results and consideration of the person's broader circumstances.

More abbreviated adaptive behaviour assessment tools have tended to be focused on a person's ability to perform activities of daily living rather than issues associated with self-management where the reduced functioning of a person with criminal justice system involvement tends to be more apparent.

Another factor is that the ongoing reduced functioning of many people with criminal justice involvement may arise not just from their intellectual impairment but also from a psychiatric condition or other impairment. Therefore, it may be important to have professional evidence of these other impairments, that they are likely to be permanent and of their impact on the person's functioning. In some cases, reduced functioning will arise from a combination of an IQ between about 65 and 85 and psychiatric conditions such as post-traumatic stress disorder, anxiety or personality disorder plus perhaps an acquired brain injury from trauma.

Particular care is needed in assessing a person from an Indigenous or CALD background as common assessment tools may have limited cultural relevance and cultural factors may impede the person's participation in assessments.

See *Challenging a decision of the NDIA* below for review rights if the NDIA decides a person is ineligible to become a participant in the scheme.

Gathering further evidence

In many cases, there will already be assessments in existence and it is a matter of seeking them out from places such as the school that the person attended or from a justice agency. People with intellectual disability are often understandably reluctant to have yet another assessment. The person can take existing assessments to their first meeting with the NDIA or can ask the NDIA to obtain these assessments.

Section 55 of the NDIS Act gives the NDIA power to access from other people and agencies information relevant to whether a person meets the access criteria. This does not require the person's consent. However, in practice, the NDIA appears to be seeking consent.

After a person has made an access request, the NDIA can require the person to have an assessment or assessments. The agency needs to be sensitive to ensuring the person has any support needed to comply with this requirement. An agency staff member might make an appointment for the person and give the person a time and place and the person might appear to understand all this. In fact, the person might be quite confused by what is being said but not want to appear stupid by saying so. The person may need support to attend the appointment, for example reminders of it, assistance to get there and encouragement that the assessment will benefit them

The early intervention requirements

These are an alternative to the disability requirements. They require only that the person:

- has one or more intellectual, cognitive, neurological, sensory, physical or psychiatric impairments that are likely to be permanent, or is a child with a developmental delay, and
- early intervention supports are likely to reduce the person's future support needs by reducing the deterioration of functional capacity or strengthening the sustainability of informal supports.

(NDIS Act, section 25)

This alternative to the disability requirements may sometimes be important for a child or young person with criminal justice contact. The early intervention requirements may be easier to satisfy.

PREPARING A PARTICIPANT'S PLAN

Once a person becomes an NDIS participant, the NDIA has to work with the person to prepare a participant's plan. The plan includes:

- the participant's statement of goals and aspirations including their current environmental and personal context (living arrangements, current informal and other supports and social and economic participation etc) and
- a statement of participant supports prepared with the participant and approved by the NDIA.

(NDIS Act, section 33)

The planning and assessment conversation may occur over several visits if this is helpful to the participant and the participant may invite whoever they want to be included.
(Operational Guidelines – Planning and Assessment – The Planning Conversation)

How quickly will a participant's plan be developed?

The NDIA has set prioritisation timeframes for how quickly a plan should be developed. These include:

- Where the stability of the participant's accommodation and care arrangements have broken down – Immediate.
- Where the stability of the participant's accommodation and care arrangements are unsustainable or fragile – Within 2 weeks.
- Where the participant is leaving gaol and needs appropriate community supports – Within 6 weeks.

(Operational Guidelines – Planning and Assessment – Prioritisation of Plans – Urgent Cases)

Preparing the statement of goals and aspirations

The principles in the NDIS Act (sections 4) emphasise issues like

- the right to realise a person's potential for physical, social, emotional and intellectual development,
- support to participate in and contribute to social and economic life, and
- respect for a person's dignity and to be free from abuse, neglect and exploitation.

NDIA staff can support a participant to prepare their statement of goals and aspirations. Where a participant requires significant support, the agency may pay for someone else to provide the support. Staff should seek to build sustainable, supportive relationships with participants and their supporters and this approach should be tailored to the individual.

(Operational Guidelines – Planning and Assessment – Facilitating the Participant's Statement of Goals and Aspirations)

Many people with disabilities, with the support of families where needed, will have clear goals and aspirations.

Due to the interplay of their disabilities and commonly impoverished, neglected and exploited backgrounds, people with intellectual disability in contact with the criminal justice system will tend not to have clear and positive goals and aspirations. Their goals and aspirations may change from week to week or even hour to hour. Their goals and aspirations may be very inconsistent with the principles in the NDIS Act. For example, a person may have a goal of being part of a peer group in which criminal conduct and abuse of drugs is the norm. A person may want to re-establish relationships with their family even though this will involve clear risks of the person being abused and exploited.

People with criminal justice system involvement will generally need considerable and skilled support to develop a positive statement of goals and aspirations. The NDIA needs to build this support into the way in which it operates.

Children and young people in the justice system often come from chaotic family backgrounds. Preparation of a participant's goals and aspirations may be best achieved by a case conference involving a range of involved people. The child or young person may have service providers such as youth workers who they want to assist them and their family to work out goals and the supports that will help to achieve the goals.

Sometimes, it will be important to '*start small*' with the person. Help the person develop some modest but useful goals. If action occurs on those, the person may be ready to set some bigger goals.

The Good Lives Model is one valuable tool for assisting a person with criminal justice involvement towards positive goals and aspirations.

The Good Lives Model

This offender rehabilitation model is widely used including by the Community Justice Program in NSW disability services. The model is based on the assumption that people offend to achieve normal underlying goals but use dysfunctional strategies to obtain the goals.

The model sees people's goals as related to achieving 11 'primary goods' or human needs:

Primary good	For example
Life	<i>Being physically fit</i>

Knowledge	<i>Exploring further education</i>
Creativity	<i>Creating art or music</i>
Inner peace	<i>Wanting to be free from distress</i>
Spirituality	<i>An active role in religious activities</i>
Community	<i>Being part of a community</i>
Happiness	<i>Improving one's mood</i>
Friendship	<i>Developing intimate and platonic relationships</i>
Excellence in agency (i.e. autonomy)	<i>Being able to do things for one's self</i>
Excellence in play	<i>Being good at a sport</i>
Excellence in work	<i>Being good at one's job</i>

How people go about achieving these goods is influenced by biological, social, psychological and development processes. People can seek primary goods in a prosocial or antisocial manner.

Offenders commonly choose antisocial strategies, for example:

- Pursuing being part of a community by seeking acceptance in a peer group where criminality and violence towards others is the norm.
- Pursuing intimate friendships by sexual aggression.
- Pursuing inner peace by abuse of drugs and alcohol.

The Good Lives Model is about assisting a person to develop a good life plan where prosocial strategies for achieving goods replace antisocial ones.

For example, a person who uses violence to demonstrate their physical fitness might choose a team sport instead. A person might choose employment or voluntary work instead of housebreaking as a way to show that they are good at their job.

Valuable references in relation the Good Lives Model:

- Frize (2013) summarises the model and its relationship with individual planning within forensic disability services.
- Ward and Gannon (2006)
- Ward and Stewart (2003) focuses on sex offenders, as do Yates and others (2010) and Willis and others (2012).

- Ward, T., Yeats, P. and Willis, G. (2012) discusses the model and the risk need responsiveness model.

Old Me/New Me

The Old Me/New Me model is a strengths based model where a person first identifies their present characteristics and behaviours (Old Me) associated with an offending lifestyle. The person then develops a New Me which includes new characteristics and new behaviours. The New Me supports positive ways to live without offending.

See Haaven (2006) for an overview of the Old Me/New Me model.

Preparing the statement of participant supports

The NDIA planner prepares this statement with the participant.

The statement of participant supports has to specify:

- Any general supports that will be provided to the participant.
- Any 'reasonable and necessary supports' that will be funded by the NDIS - these may be specifically identified or described in general terms.
- When the plan will be reviewed.
- How the plan and any funding will be managed.

(NDIS Act, section 33)

In deciding whether to approve a statement of participant supports, the NDIA has to:

- a) Identify the participant's goals, aspirations, strengths, capacity, circumstances and context.
- b) Assess the participant's activity limitations, participation restrictions and support needs arising from their disability.
- c) Assess risks and safeguards in relation to the participant.
- d) Relate support needs to the statement of goals and aspirations.

The agency is to use appropriate assessment tools that are specified in operational guidelines and has to ensure that tools are applied appropriately to each participant. Tools must be fair and transparent and be related to areas of activity and social and economic participation

identified in the World Health Organisation International Classification of Functioning, Disability and Health.

(NDIS (Supports for participants) Rules, Part 4)

Needs assessment

The NDIA has adopted a Support Needs Assessment Tool for planners to use in considering both support needs and whether a person satisfies the reduced functional capacity part of the disability requirements. However, a participant can also provide existing needs assessments. The agency needs to take account of all relevant assessments and can obtain a specialist needs assessment for people with very complex needs.

The agency's tool covers ten domains:

- a) Learning and applying knowledge (eg understanding and remembering information, learning new things, practicing and using new skills and ideas)
- b) General tasks and demands (eg doing daily tasks, managing daily routine, handling problems, making decisions)
- c) Communication (eg being understood and understanding other people)
- d) Mobility (eg getting in or out of bed or a chair and moving around in your home and community)
- e) Self-care and special health care needs (e.g. showering/bathing, dressing, eating, toileting),
- f) Domestic life activities (eg preparing meals, cleaning, housekeeping and home maintenance)
- g) Interpersonal interactions and relationships (eg making and keeping friends and relationships, coping with feelings and emotions)
- h) Community, social and civic life (eg community activities, recreation and leisure)
- i) Education and training
- j) Employment

(Operational Guideline – Planning and Assessment – Assessment of Participant's Needs)

The NDIA needs to give very careful consideration to what assessment tools should be used with people with intellectual disability and criminal justice involvement. See *Becoming a participant* above in relation to whether a generic assessment tool will adequately assess the functioning of a person with intellectual disability and criminal justice involvement. It is all

the more unlikely that a generic tool will adequately assess the support needs and other requirements for a statement of participant supports.

An adequate assessment of a person with criminal justice involvement may often require

- a combination of tools covering issues including intelligence, communication, adaptive functioning, mental health, needs and risk assessments, or at a minimum,
- the least inappropriate tool to be complemented by input from a number of informants including the person, people who know them well and professional judgement by the assessor.

The assessor will need skills to engage with the person and experience working with people with intellectual disability and criminal justice involvement. Input from people who know the person well will usually be very important to an adequate assessment.

Sometimes, current assessments may already exist that cover at least part of what the NDIA needs. Section 55 of the NDIS Act gives the agency power to access from other people and agencies information relevant to the preparation or review of a participant's plan.

In many case, a specific communication assessment by a speech pathologist will be very important. See *Communication* in Section 4.

The I-CAN support needs assessment is a general support needs assessment tool developed and validated by the Centre for Disability Studies at the University of Sydney. In accordance with the NDIS approach, it is related to areas of activity and social and economic participation identified in the World Health Organisation International Classification of Functioning, Disability and Health. See www.i-can.org.au However, the I-CAN's suitability for people with criminal justice involvement is not clear.

Tools that are currently used specifically with people with intellectual disability in contact with the criminal justice system include:

➤ **Strengths, needs, risks and goals profile (SNRG)**

The Community Justice Program (CJP) in NSW disability services has developed the SNRG profile as a needs assessment tool for people in its programme - people with intellectual disability and very serious offending histories. SNRG focuses on:

- Strengths within the person and their environment.
- Needs - considering adaptive functioning similarly to a typical disability needs assessment plus needs related to the person's offending.
- Risk through validated risk assessment measures and functional behaviour analysis.
- Goals of the participant - short and long-term.

SNRG is based on

- Current disability philosophy, policy, practice and legislation in NSW.
- The Good Lives Model-see above.
- The Risk -Need-Responsivity (RNR) Model for offender assessment and rehabilitation

The three elements of the RNR Model are:

- The Risk Principle - interventions should be matched to the level of risk of the offender with higher risk offenders receiving more supervision.
- The Need Principle – the targets for intervention should be dynamic (i.e. changeable) factors that directly influence a person's risk of reoffending. These factors include pro-criminal attitudes, social supports for crime, family relationships supportive of crime, lack of education or employment, lack of prosocial recreation options, drugs and alcohol and antisocial personality patterns.
- The Responsivity Principle – supervision should be delivered in a way that is responsive to the learning style, cognitive capacity and motivation of the offender and ensures an appropriate relationship between the offender and supports.

The SNRG profile for an individual covers wide ranging factors including:

- intelligence
- adaptive functioning
- offence history

- a functional analysis of the person's behaviour
- risk assessments
- a detailed profile of the persons history and current situation in relation to family, companions, religion, culture, accommodation, education, employment and finances
- drug and alcohol use
- mental health including emotions and personality
- attitudes
- short and long term goals

The profile concludes with recommendations in relation to a holistic response to the person's needs including accommodation, staff supports, behaviour supports, family issues, day activities, financial, social, religion and culture, physical and mental health, alcohol and other drugs and skill building.

Community Justice Program (2010) is a guide to using the SNRG profile. See also Andrews & Bont (2006).

➤ **Youth level of service/case management inventory-Australian adaptation (YLS/CMI-AA)**

This tool is designed to assess risks, needs and strengths in young offenders. It is a case planning tool rather than a formal risk assessment. It covers:

- prior and current offences
- family and living circumstances
- education/employment
- peer relations
- cognitive and physical impairments
- mental health
- substance abuse
- leisure/recreation
- personality/behaviour
- attitudes/beliefs

This tool is used by Juvenile Justice NSW staff with specific training in its use.

➤ **Specific risk assessment tools for offenders**

There is a range of these which can be used with people with intellectual disability, including:

- The Assessment of Risk and Manageability of Intellectually Disabled Individuals who Offend (Armadillo) - general version and sex offender version.
- LSI-R (a risk/needs assessment for offender treatment planning and placement).
- HCR-20 (violent offences).
- SVR-20; STATIC 99 and 99R (sexual offences).

These tools can only be administered by a professional with expertise working with offenders.

For further reading on assessment, see Lindsay and others (2004), chapters 6 and 7.

Supports to be provided

The statement of participant supports has to specify:

- any general supports that will be provided to the participant
- any 'reasonable and necessary supports' that will be funded by the NDIA - these may be specifically identified or described in general terms.

General supports include supporting a person's access to mainstream services and community resources. NDIA local area coordinators can assist with this and coordination of different supports. (Eg [Operational Guidelines – Planning and Assessment – Supports in the Plan – Interface with Housing and Community Infrastructure](#)) Some plans might only include general supports and not have any funding attached to the plan.

People with intellectual disability and criminal justice involvement will often have volatile and fast changing support needs. Therefore, it will often be important for their the NDIS supports to be described in general terms so that service providers can react flexibly and quickly to changes in circumstances. Funding will also need to make allowance for a person's volatility in support needs. For many people, a particular crisis may mean that their support needs escalate dramatically in the short term.

Necessary supports will often include:

- Accommodation – ranging from support to obtain and maintain a tenancy through to a group home. For more information, see Section 4 of this Guide.
- Staff supports - ranging from ad hoc support when needed to deal with crises through to 24-hour supervision and support. Some individuals can function largely independently but need support to deal with ad hoc challenges - understanding correspondence, dealing with a rude neighbour, an unexpected minor crisis etc.
- Communication – assessing and addressing communication impairments. For more information, see Section 4 of this Guide.
- Behaviour support - ranging from strategies to assist a person avoid and deal with occasional crises through to an extremely detailed and multifactorial behaviour intervention and support plan, including specific elements addressing offending behaviour. See Section 4.
- Support with the criminal justice system – for example, support to deal with a police officer who lack skills in communicating with a person with intellectual disability, support to deal with a Legal Aid lawyer who has to represent 20 clients each day, support to understand what is happening in court and understand conditions on bail or a bond, support to comply with the conditions. See Section 4.
- Family issues and existing relationships - ranging from occasional support with problems through to ongoing intensive support to rebuild relationships or address risks of abuse and exploitation. Also, issues around access to the person's children.
- Day activities - ranging from linking the person to activities relevant to goals through to intensive support to engage in normal community activities.
- Employment – ranging from support to do voluntary work through to support to develop and sustain the skills needed for full paid employment.
- Financial - ranging from occasional support with complex transactions through to a high level of day-to-day support with budgeting, bill paying and spending decisions.
- Social - ranging from linking the person to desired social activities through to intensive support so that the person can participate in activities. Often, the person will need support to establish new friendships – see Ellem and others (2013) for an approach to doing this.
- Religion - support to participate in the person's religion.
- Culture - for example, supporting an Indigenous person to maintain or enhance their links with their community and heritage.

- Physical health – supporting a healthy lifestyle including diet and exercise, supporting the person to access a GP and other healthcare and to understand and act on the health professional’s advice. Some people need support to access multidisciplinary holistic health care. People with intellectual disability benefit from an annual Medicare health assessment. These assessments tend to reveal various previously undiagnosed health conditions and to lead to better health promotion.
- Mental health - supporting the person to access appropriate mental health assessment and treatment including, for example, counselling in relation to grief and trauma issues. For more information, see Section 4 of this Guide.
- Alcohol and other drugs - supporting avoidance of risky use of alcohol and other drugs and, when needed, support to access and work with a drug and alcohol counsellor. See Section 4.
- Skill building - development of skills to lead a positive and fulfilling lifestyle. See Ellem & others (2013) for one approach to doing this.

Some of these supports will only be available through funding from the NDIS. Others may be available from mainstream agencies, but the person may still need disability support to access a mainstream service and ensure it meets the person’s needs.

For supports to be funded through the NDIA, the agency must be satisfied that the support:

- Will assist the participant to pursue their goals, objectives and aspirations.
- Will assist social and economic participation by the person.
- Is value for money - the NDIA considers factors including whether the support will substantially benefit the person and reduce the person’s support costs in the long term.
- Is likely to be effective and beneficial to the person having regard to current good practice – the NDIA considers expert opinion and available evidence, including published literature, consensus of expert opinion, the lived experience of the participant and what the NDIA learns from its work.
- Is not likely to cause harm to the participant or pose risk to others.
- Takes account of what it is reasonable to expect families and others to provide – the NDIA considers the suitability of family and informal networks to provide the support a participant needs.

- Is most appropriately funded through the NDIA and not through other mainstream services as part of their universal service obligation or in accordance with reasonable adjustments required under discrimination law.

(NDIS Act, section 34 and NDIS (Support for Participants) Rules)

The NDIA also uses its Reference Package and Lifetime Cost Estimator to test the cost of a proposed plan against expected funding levels and agency annual and lifetime costs.

(Operational Guidelines – Planning and Assessment – Supports in the Plan)

Services from mainstream agencies

This division of responsibilities between the NDIS and mainstream agencies is based on *Principles to determine the responsibilities of the NDIS and other service systems* that were endorsed by the Council of Australian Governments in April 2013. As well as stating the Principles, COAG said:

All governments have agreed that our vision is for an inclusive Australian society that enables people with disability to fulfil their potential as equal citizens. To achieve this vision, all Australian governments, non-government organisations, business and the wide community have a role to play. The interactions of the NDIS with other service systems will reinforce the obligations of other service delivery systems to improve the lives of people with disability, in line with the National Disability Strategy.

Governments agree that the principles outlined in this document will be used to determine the funding and delivery responsibilities of the NDIS and other systems in achieving this vision. The NDIS launch sites provide governments with an opportunity to review interactions between the NDIS and other service systems and consider any lessons arising out of launch.

www.coag.gov.au/node/497

The COAG Principles are reflected in the NDIS (Support for Participants) Rules and Operational Guidelines on Interface with other service systems. See Operational Guidelines on Planning and Assessment – Support in the Plan at www.ndis.gov.au/about-us-1

In summary:

Health (excluding mental health) – The NDIS Rules say that the NDIS will not be responsible for diagnosis and clinical treatment of health conditions and ‘other activities that aim to improve the health status of Australians’, for example preventive health. However, it will be responsible for ‘supports related to a person’s ongoing functional impairment and that enable the person to undertake activities of daily living’ including where they need to be delivered by health practitioners.

The Operational Guidelines say that the NDIS is generally responsible for:

- assistance to engage with the health system such as decision making support and making appointments,
- in hospitals and other health services - continuation of support provided in other contexts with complex communication needs or challenging behaviour,
- training of NDIS funded support staff by health professionals, and
- transport to medical appointments where no other transport is appropriate.

With some supports, the NDIA will look at their purpose in deciding whether the NDIS or the health system is the more appropriate provider:

- Coordination of management of life stages and transitions – the system that delivers the majority of support should usually do the coordination.
- Therapeutic support including by allied health professionals – the NDIS will provide care focused on the maintenance of functioning. The health system should cover time limited intervention following an accident or illness.

Mental health – The NDIS Rules say that the NDIS will not be responsible for clinical mental health services or ‘supports relating to a co-morbidity with a psychiatric condition where the co-morbidity is clearly the responsibility of another service system (eg treatment for a drug or alcohol issue)’.

However the NDIS will be responsible for non-clinical supports focused on a person’s functional ability including supports to undertake activities of daily living and participate in the community.

The Operational Guidelines say that with some supports, the NDIA will look at their purpose in deciding whether the NDIS or the health system is the more appropriate provider:

- Coordination of management of life stages and transitions – the system that delivers the majority of support should usually do the coordination.
- Therapeutic support including counselling and social work – the NDIS will provide care focused on the maintenance of functioning including behavioural and cognitive interventions and development of social and communication skills.

The mental health system is responsible for mental health early interventions including clinical support for child and adolescent developmental needs.

Child protection and family supports – The NDIS Rules say that the NDIS will be responsible for support for children, families and carers to maintain caring roles including community participation, behavioural support and respite.

The Operational Guidelines say that the NDIS is generally responsible for:

- functional impairment related supports to a participant or their family to develop living skills
- support to participate in community activities
- disability specific parenting training programs
- behaviour support and
- disability-specific support in out of home care

School education- The NDIS Rules say that the NDIS will not be responsible for supports related to educational attainment. It will be responsible for transition from school into post school training or employment.

Employment – The NDIS Rules say that the NDIS will be responsible for some individual supports related to a person's functional impairment, including assistance with transport and transition into work.

Housing – The NDIS Rules say that the NDIS will be responsible for supports to maintain a tenancy and for behaviour management.

Justice – The NDIS Rules say that, for people who are in trouble with the law but not in custody, the NDIS will provide supports on the same basis as usual. For people who are in custody, the NDIS will provide transition supports and may provide some other support.

The Operational Guidelines say that the NDIS is generally responsible for disability supports for people on community based orders, including support to meet court imposed conditions, for example the conditions on a bond or parole.

With some supports, the NDIA will look at their purpose in deciding whether the NDIS or the justice system is the more appropriate provider:

- Coordination of management of life stages and transitions – the system that delivers the majority of support should usually do the coordination.
- Behavioural support and development of life skills – the justice system should be responsible for supports ‘specific to offending behaviours such as programs that aim to reduce specific criminal behaviours’. The NDIS will provide supports that build the person’s abilities such as social relationships, communication and behaviour management.
- Group living to assist with activities of daily living and supervision to address behaviours of concern – the NDIS will be responsible if the primary purpose of support is activities of daily living rather than community protection or clinical treatment. The justice system should be responsible if ‘the setting is designed specifically to protect the community, prevent offending or deliver clinical services’.

The distinctions drawn in the last two dot points are cloudy and questionable. They need further consideration. It is likely that many of the demarcations between the role of the NDIS and those of mainstream services will need to be reviewed over time.

None of the above rules and guidelines should prevent the NDIA from funding support that people with disabilities need to enable them to access mainstream services. A person with intellectual disability and criminal justice system involvement will often need disability support to effectively access mainstream services. For example, if a person needs drug counselling, disability support may be required to locate a counsellor and get the person to the appointment, support communication between the counsellor and the person and then support the person to remember and implement what came out of the counselling session.

Often, a mainstream service's first reaction is to say 'no' to a person with intellectual disability because staff do not understand their obligations to accept people with disability and make reasonable adjustments to meet their needs. Staff may say that the person does not have the capacity to benefit from the service. In these situations, a disability support worker may need to '*educate and advocate*' with the mainstream service, including pointing the service to disability training opportunities.

Where a person needs a range of disability and mainstream services, disability support will often be essential to coordinating these.

Managing a participant's funding

Management of a participant's funding includes receiving the funding from the NDIA, purchasing the supports identified in the plan and acquitting the funding to the agency. The funding can be managed by the participant, a plan nominee, a registered plan management provider or the agency. The wishes of the participant and nominee are important but ultimately the agency decides who will manage the funding. In some cases, part of the funding will be managed by one person and part by another. (NDIS Act, sections 42-46 and NDIS (Plan Management) Rules)

It may be very unlikely that a person with intellectual disability and criminal justice involvement would be able to effectively manage their own funding. It also may be unlikely that the person would have a nominee from their family able to do this. There may be some people who have other nominees who would be suited to this role. However, it is more likely that people with criminal justice involvement will have the NDIA managing their funding.

It is currently unclear what organisations will emerge as plan management providers and whether they will be willing and suited to take that role for people with criminal justice involvement.

Unlike other funding managers, the NDIA will only be allowed to spend money on services provided by a registered provider of supports (NDIS Act, section 33(6)). Registered providers have to meet a range of criteria. The danger is that there may not be registered providers willing and suitable to provide the support needed by some people with criminal justice involvement. This may be particularly so in rural and Indigenous communities where flexible and innovative local approaches may be needed.

Setting a review date

The participant's plan has to set a date by which the plan will be reviewed. In view of the often fast-changing lives and goals of people with criminal justice involvement, regular reviews will usually be very important.

Where a person has urgent needs for support, an initial basic plan may be prepared with a short time set for the review. (Operational Guidelines – Planning and Assessment – Overview)

Reviewing and changing the plan

A participant may change their statement of goals and aspirations at any time. However, this does not automatically trigger a review of their statement of participant supports.

A participant's plan will be reviewed:

- Before the plan's review date and in any other circumstances specified in the plan.
- If the NDIA decides to conduct a review at any other time, either on its own initiative or at the request of the participant.

A review of the plan involves the preparation of a new plan with the participant in the same way as to the first plan

(NDIS Act, sections 47-50)

CHALLENGING DECISIONS OF THE NDIA

If a participant is not happy with some major decisions of the NDIA, the participant may seek a review of the decision by a reviewer in the NDIA. If the participant is still unhappy with the decision, they can seek a review by the Administrative Appeals Tribunal.

The decisions that can challenged include:

- To appoint a plan nominee
- That a person does not meet the access criteria
- The statement of participant supports in a plan

'A person who is directly affected' by a decision may seek a review. (NDIS Act, sections 99-103)

As well as the participant personally, presumably their nominee can seek a review. It is unclear whether this also would include other people such as family carers.

In each NDIA trial site, there is an advocacy service funded to support and advise people who wish to seek a review in the AAT. These services include:

New South Wales (Hunter)

Disability Advocacy NSW

Phone (02) 4927 0111 or 1300 365 085

South Australia

Brain Injury Network South Australia

Phone (08) 8217 7600 or 1300 733 049

Tasmania

Advocacy Tasmania Inc

Phone 1800 005 131

Victoria (Barwon)

Regional Information and Advocacy Council

Phone (03) 5245 7986

Section 4

MEETING SOME KEY NEEDS

SUPPORTING A PERSON THROUGH THE JUSTICE SYSTEM

Key roles

When a person with intellectual disability is in contact with the criminal justice system, disability support services have key roles:

1. **Police interviews** - Providing or ensuring support to the person in police interviews so as to assist the person to understand what is happening and being said by the police and to understand and exercise their rights.
2. **Getting a lawyer** - Supporting the person to access legal advice and representation, including accompanying the person to an interview with the lawyer. The lawyer will usually be a Legal Aid lawyer who is extremely busy and with limited skills and experience in communicating with a person with intellectual disability. A support worker often has a vital role in aiding communication between the person and the lawyer and ensuring that the lawyer considers relevant options such as seeking to have charges dismissed due to the person's disability.
3. **At court** - Supporting the person to attend court and providing or ensuring support for the person at court.
4. **Getting bail** - Seeking to ensure the availability of support arrangements that will underpin a bail application. Supporting the person with the lawyer to seek to ensure that bail conditions are realistic and understandable to the person.
5. **Complying with bail** – Supporting the person to comply. For example, explain what the condition means in practice – if you cannot go within 500 metres of the victim's home, this means you cannot go closer than KFC. Regularly remind the person that the conditions still apply and what will happen if they are breached.
6. **Court reports** - When requested by the person's lawyer, providing a report that can be used in court on behalf of the person.
7. **Non-custodial outcomes** - Liaising with justice workers who are preparing pre-sentence reports to ensure the least restrictive options are being properly considered. Seeking to ensure the availability of support arrangements that will underpin the charges being dismissed or the person receiving a non-custodial sentence such as a good behaviour bond. Supporting compliance with any conditions.

8. ***In custody*** - If the person is in gaol or a juvenile justice centre, regularly visiting the person and seeking to ensure that their disability support needs are being met. Also, ensuring the availability of support arrangements for when the person is eligible for release.

See, for example:

- The Justice Services Policy and accompanying Criminal Justice Resource Manual issued in 2009 by Ageing, Disability and Home Care in NSW. These documents are not currently online but may be available from the Clinical Innovation and Governance section of ADHC - (02) 9407 1598.
- *Which way is justice?* Practice manual for supporting people with intellectual disability in the criminal justice system. Community Living Association, Queensland.
communityliving.org.au//index.php?option=com_content&task=view&id=21&Itemid=35

In carrying out some of those roles, a disability support service may need to liaise with police and officers from adult and juvenile corrections departments. However, the service needs to remain very clear that its role is to support the person and the person's rights and not to assist the police or correctional authorities against the person.

The role of a support person

Legislation and policy in various parts of Australia require police to have a support person present when interviewing a suspect with an intellectual disability.

In two states there are services that provide or advise support people who assist people with intellectual disability in police interviews or in court.

New South Wales – In some parts of NSW, the Intellectual Disability Rights Service (IDRS) provides support people in police interviews and in court. In other parts of the state, IDRS provides telephone advice to support people. www.idrs.org.au

Victoria- The Office of the Public Advocate provides '*independent third persons*' to act as support people in police interviews.
www.publicadvocate.vic.gov.au/services/108/

This kind of support needs to be available nationally either through the NDIA or funding of advocacy services.

IDRS has developed a role for a support person in police stations, with a strong rights basis consistent with the NDIS Act. This includes:

- Explaining to the person their rights and choices, and encouraging them to exercise their rights, including the right to silence and to legal advice.
- Checking the person's understanding by asking them to explain back what their rights are.
- Advising the police if the support person believes that person does not understand their rights.
- Speaking up with the police if a support person believes the person is too distressed or confused to be interviewed or does not understand their rights or has not understood the question or is being led by the police.

Specialist disability legal and advocacy services

In some states, there are legal advocacy services that specialise in providing legal advice, and sometimes representation, to people with intellectual disability. Two of these have major focuses on criminal law.

New South Wales – The Intellectual Disability Rights Service (IDRS) provides advice and sometimes legal representation. It has also produced a guide for lawyers who are seeking to have charges dismissed because the person has an intellectual disability - *Step by step guide to making a section 32 application for a person with intellectual disability*. www.idrs.org.au

Queensland - TASC Disability Law Project is a criminal law service for people with an intellectual disability, acquired brain injury or mental illness. The Project provides legal representation, advice and support to people who have been charged by police and are to appear before the Toowoomba and Ipswich Magistrates Court or Children's Court. www.tascinc.org.au/legal-services/disability-law-project

Also, Queensland Advocacy Inc runs a Justice Support Program (JSP) which provides non-legal advocacy support to some people with disability who are involved with the criminal justice system. See www.qai.org.au

UK Registered Intermediary Scheme

In the United Kingdom, communication in court with some young people occurs through a '*registered intermediary*'. This is designed to assist communication with young people who have a disability. The intermediary communicates to the witness the questions that the court and lawyers ask, and communicates back the person's answers.

Intermediaries come from a range of professional backgrounds and have had specific training in the intermediary role.

This scheme should be considered for Australia.

A HOME WITH SUPPORT

People with intellectual disability and criminal justice involvement often lack stable and appropriate accommodation and support in their home. For example, people may be homeless, in youth refuges or in boarding houses. People may be in public housing but without the support they need to sustain their tenancy and lead a positive lifestyle. People may be living with family or friends but with offending and drug misuse being an accepted part of the environment.

Meeting a person's accommodation and support needs is often fundamental to creating the stability that allows support services to meet other needs.

Most people with intellectual disability and criminal justice involvement have potential to live semi-independently if they have the right support. Some people, at the extreme end people with long-standing patterns of sexual or violent offending, need long-term intensive supervision and support. A wide range of options is needed.

For children and young people, accommodation needs to be age appropriate. Often, it may be with immediate or extended family, with the family receiving significant support to meet the person's needs.

The range of supported accommodation funded by the Department of Human Services in Victoria and by the Community Justice Program (CJP) of ADHC in NSW illustrates some of the diversity that is needed.

The NSW CJP includes group homes with intensive support and supervision, clusters of flats and townhouses, drop-in support in people's own homes and tailored packages of support. Advocacy groups have concerns about the clustering arrangements in view of their potential to become institutional and the ghetto effect that they may create.

Some residents are subject to restrictions on their freedom of movement through guardianship orders.

In Victoria, services for offenders include a range of supported accommodation, two short-term houses prioritising bail applicants, a long-term residential program and a residential treatment facility. The intensive residential treatment program accommodates residents who are ordered to be there under the Disability Act.

The NDIA needs to be clear that its driving focus is the individual person with disability and not the safety of the community. However, it will seldom be in the interests of the person with disability to be in a situation where they are likely to reoffend and returned to gaol. The NDIA will need to work out how its role relates to legislation which includes a community protection focus such as the Disability Act Victoria. Guardianship legislation does not usually include a community protection focus.

Urgent short-term accommodation is a common priority:

- Where a person has inadequate housing and support and appears likely to offend
- To give a person a fair chance of obtaining bail or a non-custodial sentence, or
- If a person is released from a correctional setting without pre-release planning having set up an appropriate option.

Short-term accommodation may be in a flat with support but for some people may be better provided with a higher level of support in a small group setting (Simpson and others 2001).

COMMUNICATION

People with intellectual disability often have problems with:

- Expressive communication - ability to get their message across
- Receptive communication - ability to understand what others are saying to them
- Recency - only remembering the last thing you say to them
- Suggestibility - easily led during conversation
- Acquiescence - will agree with things to please people, particularly authority figures

There is a growing research base focusing on the speech, language and communication needs of young offenders and evidence that difficulties in these areas increase the risk factors for offending (Royal College of Speech and Language Therapy 2010). There is a high prevalence of communication impairments in young offenders that is often undetected. This includes understanding abstract concepts and difficulty relaying information in a logical manner. (Bryan, 2004; Gregory & Bryan, 2011; Snow & Powell, 2002, 2011a, 2011b). If all of this is the case for young offenders generally, one would expect that it was the more so for offenders with intellectual disability.

Research also shows that other people often overestimate the communication skills of individuals with intellectual disability and use language at a higher level than individuals can understand. (Kevan, 2003; Smidt, Balandin, Reed & Sigafos, 2007).

It is easy to see how impaired communication skills could be related to offending by a person with intellectual disability. For example:

- A person is upset by the behaviour of a neighbour, tries to express their upset verbally, a misunderstanding develops and the situation escalates into violence.
- Police question a person about an incident. The person does not understand. The police think that the person is being uncooperative and become very authoritarian. The person becomes anxious and the situation escalates to one where the person is charged with assaulting police and resisting arrest.
- Not wanting to appear stupid, a person feigns understanding of conditions on bail or a bond and then unknowingly breeches them.

An assessment by a speech pathologist will often be a very important part of determining the package of support that a participant in the NDIA should receive. Assessment should occur in the context of a multidisciplinary team with consideration on the impact that psychosocial, emotional, behavioural and family systems issues have on speech, language and communication outcomes. (Speech Pathology Australia 2010)

The Statewide Behaviour Intervention Service in NSW disability services (ADHC) is in the process of developing a protocol for assessing the communication skills of people with intellectual disability and criminal justice system involvement. The protocol aims to guide speech pathologists supporting people with disability in relation to the assessment process, tools and intervention strategies that may be appropriate.

Strategies to address communication impairments of people with intellectual disability may include:

- Training and information for people interacting with the person so they are better attuned to possible communication impairments and how to maximise communication.
- Making communication easier for the person with intellectual disability. As a starting point, use plain English. Also, use alternative communication means. For example, the Intellectual Disability Rights Service has a training package *Getting arrested-what to do* that includes a DVD and photo book. www.idrs.org.au/cjsn/index.html#educationtraining
- Skills development programmes to enhance the communication skills of the person with intellectual disability.

BEHAVIOUR INTERVENTION AND SUPPORT

Challenging behaviour is:

- culturally abnormal behaviours of such an intensity, frequency or duration that the physical safety of the person or others is likely to be placed in serious jeopardy, or
- behaviour which is likely to limit use of, or result in the person being denied access to, ordinary community facilities (Emerson 2001).

People with intellectual disability and criminal justice involvement commonly have challenging behaviour including behaviour that leads to the criminal justice system. The behaviour may then be called '*offending behaviour*' but there is no dichotomy between '*challenging behaviour*' and '*offending behaviour*'. Whether behaviour is described as

challenging or offending will depend largely on whether the person happens to have been charged and the likelihood of this will vary with a wide range of circumstances.

Challenging/offending behaviour can have various contributing and inter-related factors including biological, psychological, social and developmental factors.

Psychologists and other behaviour practitioners in disability services generally approach behaviours of concern by assessing the function of the behaviour and devising strategies to address the function. The strategies focus particularly on addressing environmental and skills development factors. For example, if the behaviour is related to a communication impairment, strategies may focus on developing the person's communication skills and the skills of family and support workers in communicating with the person. If the person is bored, strategies focus on providing a more stimulating and interesting environment. See McVilly (2004) for a text book on this positive approach to behaviour support.

The Australian Psychological Society (2011) has developed minimum standards for behaviour support plans (BSPs):

- Plans should be formulated in plain language and any technical terms should be explained in lay terms.
- The identified behaviour(s) should be operationally defined and the topography should be detailed (form, intensity, frequency and duration).
- The hypothesised function(s) of each behaviour, based on a documented functional assessment, should be outlined.
- Predictors and setting events should be described in detail (e.g., places, activities, people and personal circumstances such as health status or social incidents), together with strategies to minimise their occurrence or diffuse their impact.
- The person's preferred circumstances and needs should be outlined; ie details of the circumstances under which the behaviour is known not to occur because the person's needs are met and they are happy.
- Environmental (social, physical, organisational and procedural) strategies should be detailed. These should include strategies to explicitly enhance the person's quality of life and wellbeing.

- Educational strategies should be described, together with details of associated reward and reinforcement programs designed to enhance the development of alternative, more adaptive behaviours.
- The goals of the BSP should be outlined, as should the review/evaluation timeline and procedures (including data collection processes and time lines). Details of the circumstances under which the review process might be brought forward should also be included.
- Communication strategies should be detailed, providing a clear explanation of the person's receptive and expressive communication skills and the strategies (including any augmentative or alternative communication techniques, aids or devices) that those who provide support should be using.
- Crisis management procedures should be specified.
- The educational and other support needs of those expected to implement the plan should be outlined.
- Team coordination, communication and responsibility protocols should be detailed and include contact options for short-term consultations and clarification of the plan.
- Any legal requirements, such as details of the consent process and the necessity for guardianship, or others' approvals for particular procedures etc., should be documented.

In the case of offenders with intellectual disability, interventions need to squarely address the behaviour. This may include counselling one-to-one or in small groups, cognitive behaviour therapy and programs focused on problem-solving, anger management and sexuality.

There is highly specialised learning in relation to how to address particular kinds of offending behaviour including sex offending, anger and aggression and fire setting (Lindsay & others 2004).

However, the intensity of behaviour intervention and support required will vary with individual circumstances.

For some people who live semi-independently and have limited histories of criminal justice involvement, a comprehensive behaviour intervention and support plan may be unnecessary and unduly intrusive. However, it will usually be important that a behaviour practitioner has

assessed the person's behaviour and at least developed a short plan (perhaps two pages) for support workers about how to interact positively with the person and a reactive strategy if challenging behaviour occurs. This might be complemented by a series of sessions with a behaviour practitioner focused on issues like counselling and anger management. Day-to-day support workers need to reinforce these teaching strategies in the person's everyday life. Support staff need training, monitoring and support in their roles.

Specialised skills and experience are required to develop a comprehensive behaviour intervention and support plan for a person with intellectual disability and major problems with offending behaviour. At present, this skill and experience is very limited in its availability around Australia. It is particularly focused in the specialised offender programmes run by disability services in Victoria, Queensland and NSW.

Where a less comprehensive plan is developed, the behaviour practitioner at least needs:

- Skills in positive behaviour support such as spelled out in the Positive Practice Framework of Victorian disability services. www.dhs.vic.gov.au/about-the-department/documents-and-resources/reports-publications/positive-practice-framework-ppf Positive behaviour support includes applied behavioural analysis, courses in which are provided by the Institute of Applied Behavioural Analysis. iaba.com/iaba_dw_website/index2.html
- Non judgemental attitudes towards offenders with intellectual disability.
- A personality that equips the practitioner to engage with and communicate comfortably with the person.
- Experience in working with offenders with intellectual disability.
- Supervision from a person with expertise in this field.

Any behaviour intervention and support plan requires regular monitoring and review.

Sometimes, behaviour intervention and support plans will need to include restrictive elements such as restraint or restrictions on a person's freedom of movement. Legislation and policies in various states and territories seek to minimise and regulate the use of restrictive practices. For example;

- In Victoria, disability service providers are required to report use of '*restrictive interventions*' to the Office of the Senior Practitioner (OSP). These include chemical and mechanical restraint and seclusion. Chemical restraint is defined as the use of medications

where the primary purpose is to control a person's behaviour as opposed to treating an identified/diagnosed medical illness or condition. Disability service providers must provide behaviour support plans to the OSP for each person subject to restrictive interventions. (Office of the Senior Practitioner 2011).

- In NSW, there is a policy of government disability services, and some restrictive practices require the consent of a guardian appointed by the Guardianship Tribunal. Ageing Disability and Home Care (2012) and Guardianship Tribunal (2013).

If restrictive practices are proposed, it is necessary to ensure that you are aware of regulatory requirements and comply with them.

MENTAL HEALTH

People with intellectual disability have high rates of mental illness and rates are higher again amongst offenders with intellectual disability (Smith and O'Brien 2004). A recent data linkage study of 680 NSW adult prisoners with intellectual disability found that 60% had a diagnosed mental disorder (Baldry and others 2012 and communication with Professor Baldry).

It is often very difficult to diagnose a mental disorder of a person with intellectual disability. Challenging behaviour of people with intellectual disability can have various contributors including unmet communication and environmental needs and mental disorders. It is often very difficult to determine the exact contributors. Disability and health professionals have complementary and interconnected roles in assessing and responding to challenging behaviour. A multidisciplinary approach is often vital to addressing complex challenging behaviour.

The research evidence on the mental health of people with intellectual disability shows:

- poor access to mental health care
- frequent errors in diagnosis
- psychiatrists and GPs perceiving themselves to be inadequately trained, and
- psychiatrists perceiving people with intellectual disability as receiving a poor standard of mental health care

(NSW Council for Intellectual Disability 2013 which summarises the research evidence on these issues).

It will often be very important for a person with intellectual disability and criminal justice involvement to have a psychiatric assessment to see whether there is possible mental disorder contributing to the person's behaviour and needs, and whether any mental health treatment is appropriate. If a person's needs are complex, finding a psychiatrist with optimal skills can be very difficult. If this is not possible, it is all the more important that any mental health treatment occurs as part of an integrated multidisciplinary team rather than separate from the work of the behaviour practitioner and other professionals.

Mental disorders that can be found in people with intellectual disability include schizophrenia, depression, bipolar disorder, anxiety and personality disorders.

For information for disability workers on signs of mental disorders and how to seek assistance, see the NSW Council for Intellectual Disability fact sheet 'Mental health' in the *Healthier lives* fact sheet series at www.nswcid.org.au

In Queensland, Victoria and South Australia, a starting point for finding a suitable psychiatrist would be the intellectual disability health centre in that state. For contacts, see 'More information sheet' in the *Healthier lives* fact sheets.

For information for professionals in relation to mental disorders of people with intellectual disability, see

- Lindsay and others (2004), chapters 13 and 15
- Dossetor and others (2011)
- Therapeutic Guidelines (2012)
- Development of *Beyond Speech Alone* resources for counsellors

www.bridgingproject.org.au/std-resources.htm

The NDIA does not have responsibility to provide clinical mental health services. However, key focuses for the NDIA in relation to people with intellectual disability and mental disorders include:

- Building state/territory wide and local collaborative relationships with mental health services. For an example of a recent statewide collaborative arrangement, see NSW Health (2010).
- Active linking of people with disability to mental health services.

- Working collaboratively with mental health services in the holistic provision of supports to an NDIA participant.

ALCOHOL AND OTHER DRUGS

A recent data linkage study of 680 NSW adult prisoners with intellectual disability found that 70% had a substance use disorder. 45% had both a substance use disorder and a mental disorder (Baldry and others 2012 and communication with Professor Baldry).

The survey of public guardians/advocates and community advocacy groups (reported in Section 2) found that people with intellectual disability and criminal justice involvement could rarely access alcohol and other drug services, and accessed services were rarely appropriate.

In *The Framework Report*, Simpson and others (2001) found:

Many members of the target group [offenders with intellectual disability and those at risk offending] have problems with alcohol and other drugs. These problems may well contribute to their offending. However, it is very difficult to get alcohol and other drug services to assist members of the target group. These services are not well equipped to assist the target group and so tend to be reluctant to do so.....there are appropriate interventions available to address alcohol and other drug problems of people with intellectual disabilities. Alcohol and other drug workers need better training so that they can confidently implement these interventions.

Approaches to address substance abuse need to be worked out holistically with other plans to meet a person's needs. Substance abuse is often associated with factors such as loneliness, and sexual abuse.

Disability workers also need to be better informed about substance abuse. This would enable them to better identify signs of a drug problem and equip them to work with alcohol and other drug services. Disability workers could work with alcohol and other drug workers and the person concerned in deciding what interventions should be used. This would both enhance the confidence of alcohol and other drug workers to work with the target group and allow the disability workers to take a role in program implementation.

If professionals have appropriate training and members of the target group have appropriate support, there is no reason why the target group should not have equitable access to the diversionary programs of the Drug Courts.

A 2010 access trial conducted by NSW Health confirmed that people with intellectual disability have difficulty accessing public drug and alcohol services. The report on the trial concluded that there needed to be modification to the way drug and alcohol treatment was provided to people with intellectual disability and more collaborative approach between drug and alcohol and disability services in supporting such individuals through treatment (NSW Health 2011).

Birgden (2012) outlined emerging good practice in relation to treatment of drug and alcohol problems in offenders with intellectual disability. This included:

- Screening assessments of clients with alcohol and other drugs (AOD) problems.
- Using strength-based approaches to treatment including adapting treatment to a person's disability, motivational techniques, explicit behaviour contracts with logical consequences, adjusting leisure activities and modifying treatment goals to fit the person.
- A practical concrete approach to counselling including role-plays and a focus on applying techniques in the real world.
- Interagency coordination. Treatment plans need to be holistic including employment, recreation, social isolation and physical abuse.
- AOD agencies should commit to providing services to, and adapting their services for, people with intellectual disability.

Birgden has been working with NSW disability services (ADHC) to develop a pilot cognitive-behavioural programme for people with intellectual disability and AOD problems.

Lindsay & others (2012) studied group programs for offenders with intellectual disability and alcohol problems. The treatment group improved relevant knowledge and retained this improvement two months later. Ms A illustrated the positive results.

Ms A had a long history of being drunk and abusive and fighting with police. She wouldn't work with services as she thought they were trying to control her. However, after participation in the group program, she saw the link between alcohol and violence

and then did a violence program. She learnt controlled drinking and left the institution in which she had been living.

In mid 2013, the Network of Alcohol and Drug Agencies (NADA) in NSW released *Complex Needs Capable: A Practice Resource for Drug and Alcohol Services*.

www.nada.org.au/resources/nadapublications/resourcestoolkits/complexneeds capable/

This resource aims to build capacity within non-government drug and alcohol services to work with people with drug and alcohol issues and complex needs such as cognitive impairment and criminal justice system contact. The resource should be useful for all organisations who work with people with AOD issues and complex needs.

Complex needs capable includes core information for AOD workers about cognitive impairment, criminal justice contact, tips on how to adapt practice techniques when working with clients with complex needs and guidance on organisational change to better support clients with complex needs.

The NDIA does not have responsibility to provide AOD services. However, key priorities for the NDIA in relation to people with intellectual disability and AOD problems should include:

- Building state/territory wide and local collaborative relationships with AOD services.
- Active linking of people with disability to AOD services, including any court-based programs. A standard referral is very unlikely to be sufficient in view of the self management problems commonly facing people with intellectual disability and the common inaccessibility of intake and treatment processes in AOD services. Commonly, the person will need disability support to make and attend an appointment and for communication between the person and AOD worker in the appointment.
- Working collaboratively with AOD services in the holistic provision of supports to an NDIS participant.

CASE STUDY - Complementary roles that are needed of AOD and disability services.

Jenny is very vulnerable, with intellectual disability and a mental illness. She had an abusive childhood with her father. As a young teenager, she got into patterns of illicit drugs, casual sex and homelessness. Jenny stole to support her drug problem and was in and out of court. Juvenile Justice linked her to a disability service but it found it very hard to locate her. She was then diagnosed with schizophrenia and it was difficult to establish a treatment regime.

Now, Jenny lives with her caring mother who also has schizophrenia and limited insight into Jenny's needs. Jenny remains very vulnerable to sexual and financial exploitation and in her drug use. She has poor time skills and seldom keeps appointments.

The disability service now tries again to engage with Jenny and slowly gains her trust. The case worker, Meredith, helps Jenny with regular personal crises. They develop a budget together and Meredith helps Jenny implement it. Meredith manages to find suitable sexuality and drug counsellors. She takes Jenny to counselling appointments, aids communication in the sessions and reinforces with Jenny what has come out of the sessions. Meredith takes a similar role with the psychiatrist. Slowly, Jenny decides she wants to change her lifestyle.

MEETING THE NEEDS OF INDIGENOUS AUSTRALIANS

What the NDIA has agreed to do

The NDIS fact sheet, *Indigenous Australians* said:

The following steps will be taken to ensure the NDIS meets the needs of Indigenous Australians:

- 1. The NDIS will check to make sure that Indigenous people with disability get the supports they need from the scheme.*
- 2. The NDIS will work with Indigenous people with disability to make sure they know about the NDIS.*
- 3. The NDIS will talk with Indigenous families and communities about how the NDIS can help them get the support they need.*
- 4. The NDIS will ensure that Indigenous people have a chance to get jobs and work in the NDIS.*

The NDIS Launch Transition Agency has started work to prepare launch sites to make sure they meet the needs of Indigenous people with disability.

The NDIS Launch Transition Agency is doing this by:

- *Working with local communities to understand the best ways that Indigenous people with disability can get the supports that they need.*
- *Building bridges into Indigenous communities through trusted intermediaries.*
- *Training Local Area Coordinators and planners in the best ways to work with Indigenous people with disability, their families and carers and Indigenous communities.*
- *Ensuring that Indigenous people with disability and their families, carers and communities are aware of the NDIS and the supports available under a scheme.*
- *Looking at ways to make sure the supports that an Indigenous person with a disability receives make a difference to their life.*
- *Gathering information about how supports assist a person to help the scheme to work properly.*

Studies on meeting the needs of Indigenous Australians with disability

Simpson and Sotiri (2004) outlined some approaches then being taken around Australia to attempt to meet the human service needs of Indigenous Australians with cognitive disabilities and criminal justice involvement. They concluded with recommendations for action:

- A. Ongoing discussion should occur between government agencies and Indigenous communities about the needs of community members who have disabilities and culturally appropriate ways to address those needs.
- B. Actions by human services need to recognise the following factors:
 - So far as possible, assistance should be based on need rather than defining a person as having a disability.
 - The diversity of Indigenous communities and of individual Indigenous people.
 - The importance of maximising the links between Indigenous offenders and their communities, cultures and heritage.
 - The deep socioeconomic disadvantage in Indigenous communities.
 - The importance of well planned communication and coordination between the range of people and agencies involved in assisting a person.
- C. Enhancement of the capacity of Indigenous communities to provide support to community members who have cognitive disabilities, both through natural support systems and through funded programs, for example mentoring programs and skills development programs.

- D. Enhancement of the capacity of service agencies dealing with Indigenous offenders to identify and respond to cognitive disability and in a culturally respectful manner.
- E. Government service agencies remedying practices and service gaps that restrict their capacity to assist Indigenous people with disabilities such as:
- Demarcation issues in relation to people with adult acquired brain injuries and those with dual disabilities.
 - Gaps in service provision eligibility between minimum school leaving age and adulthood.
 - Restrictions on which service providers can be funded for particular purposes.
 - Restrictions on employing relatives as carers.

Sotiri (2012) focused particularly on the major overrepresentation of Indigenous Australians with cognitive disabilities in the population of people subject to indefinite detention in gaol having been found unfit to be tried or not guilty on the basis of their disability. Sotiri concludes:

There are models and programs across Australia that show that not only is there no need for indefinite detention, but that a more holistic and culturally appropriate response to offending behaviour can have a significant impact on Indigenous people with cognitive impairment.

There is a range of proven behavioural intervention and disability support models available, offering a just and compassionate approach to those in this category of need. In Australia, these models exist in the form of community based accommodation and treatment programs in NSW; support to Indigenous women on remand by Sisters Inside in Queensland; the Bridging the Gap pilot in Queensland; the existence of the Office of the Senior Practitioners in Victoria and NSW; the inclusion in Victoria's Disability Act of compulsory treatment and Victoria's Third Person Program - located in the Office of the Public Advocate; the Aboriginal Prisoners and Offenders Service and the Exceptional Needs Unit in South Australia. In the Northern Territory, the disability forensics team, based in Darwin, is providing pathways out of maximum-security prisons and back into the community. These programs are among a number that are changing the need for indefinite detention of Indigenous people with a cognitive impairment, as well as the service landscape for this population. There is still however, clearly, a long way to go.

Most of the programs highlighted by Sotiri are outlined in Section 2 of this Guide. For information about Sisters Inside, see www.sistersinside.com.au

CASE STUDY

BILL is 40 years of age and was assessed as having an intellectual disability in the upper mild range of mental retardation (DSM-IV). The assessment probably underestimated his actual skill levels. Bill has a long history of poly-substance abuse (alcohol, marijuana, amphetamines, heroin, prescription and over the counter drugs) and therefore most likely has sustained brain trauma through this abuse.

At the time he was referred to the Victorian Statewide Forensic Service (SFS) approximately four years ago, Bill had an offence history dating back to when he was 13 years of age. There had been numerous unsuccessful attempts at referring him to drug and alcohol services. He had no history of adult institutionalisation and a history of independent living. His only contact with Disability Services was during times of crisis or reoffending. He resisted any attempts at proactive planning. His first offence was burglary and wilful damage. He went on to commit 37 separate offences including burglary and theft, unlicensed driving, arson, forgery, possess fire arm and endanger persons. He had two terms of custody in youth training centres and 15 terms of adult imprisonment.

After his last term of imprisonment, Bill did not consent to any proposed residential placements during the pre-release planning process. He subsequently lived in a 'squat' for several months, before being placed in a supported outreach residential program that had links to the Indigenous service system. The focus of his treatment at SFS initially focused upon rapport building before focusing more specifically on aggression management approaches.

All staff and services involved with him participated in regular case conferencing. He has committed minor levels of offending over the last four years but nothing of sufficient seriousness to warrant additional community correctional or custodial orders. There have been no incidences of assault or other offences against support staff. The previous longest period of time he had spent out of prison was six months.

(Simpson and Sotiri 2004)

CASE STUDY

CASEY is a young Aboriginal woman, who has been multiply diagnosed with a range of mental and cognitive conditions, including behavioural and emotional conditions emerging in childhood and adolescence. These include ADHD, conduct disorders, adjustment disorders, personality disorder and bipolar disorder. Casey has also been identified as having a developmental delay and intellectual disability (IQ 64). She has a long history of self-harm, physical abuse and trauma. She has used alcohol and other drugs from a young age and after the age of 13 she barely attended school.

She began to be noted by the Police as disturbed, suicidal and homeless in her early teens. She was admitted to hospital under the Mental Health Act on numerous occasions where she was usually sedated and restrained and released the following morning. In one year alone Casey was the subject of 87 police events. On numerous occasions services such as Community Services and the local hospital said they could not support Casey. In one six month period, she was held in juvenile detention from one to 39 days, with a total of 128 days spent in custody. Police noted that Casey needed medical and mental health treatment but instead was being bounced around between police and the hospital. The only time Casey was not being picked up police or held in detention was during a respite placement for 6 months during which time Casey did not come into contact with police, DJJ or hospitals.

After this Casey was again imprisoned in juvenile justice detention and was repeatedly admitted to psychiatric facilities under the Mental Health Act where she was restrained and sedated. Recently Casey was transferred into a residential setting with a disability focus and there has been a significant reduction in police contact.

(Baldry & others 2012).

The Australian Human Rights Commission (2008) report on preventing crime by Indigenous young people with cognitive disabilities and mental health issues surveyed the literature, outlined various examples of 'promising practice' and concluded by identifying best practice principles for working with this group:

- *Indigenous young people with cognitive disabilities and/or mental health issues have many of the same needs as Indigenous young people without these conditions*

This means that policies and programs need to go beyond the cognitive disability or mental health issue to look at cultural needs as well.

- *The social determinants of health need to be met to improve outcomes for Indigenous young people with cognitive disabilities and/or mental health issues*

Social determinants of health include education, housing, transport, employment, working conditions, enough money, clean drinking water, sanitation, and a good start to life. These basic preconditions provide the solid foundation that specific disability or mental health interventions must be built on.

- *Service delivery must be holistic.*

This means that interventions should address physical, psychological, emotional, social, spiritual and cultural aspects of wellbeing.

- *Intervention must be culturally aware and appropriate*

This means that workers and policy makers need to examine their own perceptions and expectations of Indigenous children, young people, families and communities. This is critical during assessment but will also lead to better relationships and service delivery. Cultural awareness also needs to encompass an understanding of history and current community challenges such as family violence and abuse which impact on young people with mental health problems and contact with the juvenile justice system.

- *Communities need to be involved and have control over programs.*

In particular, this means engaging with Indigenous concepts of disability and mental health, as well as consulting with communities to understand service barriers and gaps. Indigenous communities have the knowledge about the problems as well as the solutions, so active partnerships should be formed when developing and implementing programs.

This principle should extend all the way through to juvenile justice services, with government juvenile justice agencies drawing on Indigenous services and community networks. This means Indigenous workers and organisations should be at the centre of interventions for these young people and involved on a systematic rather than ad hoc way.

- *Interventions should build on strengths and positive identity*

Many Indigenous young people grow up confronted by negative stereotypes which can decrease their self confidence and self esteem. Pride in cultural identity should be fostered at all stages of intervention.

- *Service needs to rights based*

Indigenous young people do not need another label or further stigmatisation. A rights based model can help frame services in terms of rights, entitlements and equality rather than to focus on deficits.

The other side of a rights based model is that it implies that firm benchmarks, targets and timeframes are put in place to make governments and service providers accountable and ensure that improvements are progressively made.

- *Flexible service*

Indigenous young people are less likely to come into offices and clinics or keep strict appointments. Outreach is the preferred model of service delivery.

- *It's never too late*

There are points of diversion and intervention throughout the life course. We can't give up on young people just because they have gotten in trouble or are challenging to work with.

The following case studies are from the Australian Human Rights Commission report.

MAKING DISABILITY SERVICES WORK IN A REMOTE LOCATION

An Indigenous young man with mild to moderate intellectual disability had come into contact with the justice system. He tends to 'get into strife when led by peers without intellectual disability which is compounded by drinking. He lives in a remote area with no easily accessible services, although he is clearly in need of support to try and prevent further offending

To get around this, workers came up with a plan to use existing Aboriginal Health Services in the area and funded a disability worker for one day a week. The worker has identified triggers for offending, as well as his strengths, and found that he is ok when his family are around. The worker keeps an eye of the family situation, provides support and has tried to influence peers not to 'stir him up'. There have also been conversations with the police about his behaviour and how best to manage him

EMMA'S STORY: FROM GRAFFITI ARTIST TO ABORIGINAL TRADITIONAL ARTIST

Seventeen years of age at the time of her case, Emma had experienced learning difficulties throughout her primary and high school years as a result of her intellectual disability.

Emma began experimenting with alcohol and drugs and soon ran away from home. Her parents tried in vain to obtain support and assistance from community services. Emma had also been charged with malicious damage, following a series of arrests for damage and graffiti to public buildings. She was referred to Youth Justice Conferencing.

Emma's mother approached the Aboriginal Legal Service to get information about Emma's rights and available support. ALS staff identified that Emma had intellectual disability and referred her to the Criminal Justice Support Network at the Intellectual Disability Rights Service in Sydney.

Emma attended the Youth Justice Conference and CJSN provided support to Emma throughout the process. Emma felt very reassured that she had a support person there just for her.

The Youth Justice Conference was a major turning point for Emma. She attended a three day camp as part of the Nimbil Koorie Youth Diversion program- a cultural awareness program developed by local police and Aboriginal services. On this camp Emma discovered that she had a talent in creating Aboriginal art. Additionally, she met police officers in a non-threatening environment, which helped her self-esteem

As a result of the support of CJSN, coupled with her rehabilitation and discovery of her talent for art, Emma commenced studying a course as part of the Koori art program. Her work is exhibited at the NSW Premier's Office and hangs in the foyer of the local police station.

Section 5

IMPLICATIONS FOR NDIS DESIGN AND DEVELOPMENT

INDIGENOUS AUSTRALIANS

Despite all its obvious positive features, the NDIS is a new arm of government bureaucracy and so it faces major challenges if it is to successfully engage with Indigenous communities and provide appropriate support to Indigenous Australians with disability. See Section 4 above for some recommended approaches towards addressing the needs of Indigenous Australians with intellectual disability and criminal justice contact.

Some of the issues the NDIA will need to address are:

- The appropriateness of assessment tools for Indigenous people.
- The extreme overrepresentation of Indigenous Australians in gaol and juvenile detention. This includes a very large number of people in indefinite detention having been found unfit to be tried or not guilty on the basis of their mental impairment.
- Fostering of availability of appropriate supports in Indigenous communities, particularly those in rural and regional areas.

PROACTIVE OUTREACH AND ENGAGEMENT

People with intellectual disability and criminal justice involvement are unlikely to actively seek out the NDIS, due to factors including not knowing about it, not perceiving themselves as 'disabled', being suspicious of bureaucracies and/or not understanding how disability support could enhance their lives.

If this group is to have equitable access to the NDIS, the NDIA will need to pursue a very active process of outreach and engagement with this group and those already involved in their lives. This should include outreach and engagement by local area coordinators and other NDIA staff and establishment of strong links with organisations such as community advocacy groups, legal aid lawyers, youth services, corrective services and juvenile justice.

At an individual level, an ongoing process of engagement will also be required as a person moves from first contact with the NDIS through its processes to becoming a participant and implementation of a participant's plan.

See *Engagement with the person* and *Linking a person to the NDIA* in Section 3.

THE IMPORTANCE OF ADVOCACY, AND POLICE/COURT SUPPORT

Community advocacy groups are often the only disability organisations with whom people with criminal justice contact are involved. The flexibility of these groups and their not being linked with a bureaucracy often leads to people trusting them where they do not trust other agencies. The further development of funding of advocacy groups is vital if people with criminal justice contact (and others alienated from bureaucratic systems) are to have equitable access to the NDIS.

As well as providing advocacy, some advocacy groups provide support to people with disability in police interviews and in court. This is not only a vital protection of individual rights but also can be a bridge towards the person receiving disability supports. See *Supporting a person through the justice system* in Section 4. There needs to be a more systematic national approach to provision of police/court support through advocacy organisations.

PREVENTING AND RESPONDING TO CRISES

People with intellectual disability and criminal justice involvement tend to come to the notice of disability agencies at times of sudden and great crisis. For example, a person may have been charged with a serious offence related to the person's lack of understanding of their actions and with the person being very vulnerable if remanded in gaol. The NDIA needs to be able to respond very quickly to these situations including by providing crisis support while the process of becoming a participant is worked through.

For people with intellectual disability and criminal justice involvement, the basic support that they often want is help with week to week challenges such as understanding correspondence, an overdue electricity bill, a problem with neighbours or with a public housing authority. If the NDIA can work out a way to have support for these needs available

on tap from an 'earthy' local agency, the escalation of week to week challenges into crises, including crises involving offending, may often be avoided.

NOMINEES, AND DECISION MAKERS FOR CHILDREN

People with criminal justice involvement will generally lack a suitable person involved in their lives if they need a nominee under the NDIA. Similarly, young people with criminal justice involvement may not have a suitable adult available to make decisions on their behalf. The agency needs to work through approaches that address these gaps, including caution in relation to service providers with conflict of interest becoming nominees.

For more discussion of these issues, see *Who makes decisions about getting assistance from the NDIS?* in Section 3.

ASSESSMENT TOOLS

A generic assessment tool is very unlikely to adequately identify the functional impairments and support needs of people with intellectual disability and criminal justice involvement. See *Becoming a participant* and *Preparing a participant's plan* in Section 3.

The NDIA needs to consider how to approach assessment with this group including perhaps commissioning people with appropriate expertise to develop an assessment methodology.

DEVELOPING GOALS AND ASPIRATIONS

People with intellectual disability and criminal justice involvement generally will not find it easy to identify goals and aspirations that will lead them towards more positive and lawful lifestyles. The NDIA planning process needs to accommodate this difficulty. See *Preparing a participant's plan* in Section 3.

FLEXIBILITY IN PLANS

People with intellectual disability and criminal justice involvement tend to lead chaotic and fast-changing lives with sudden crises. Participant's plans need to be flexible to accommodate this. See *Preparing a participant's plan* in Section 3.

WORKFORCE AND SERVICE PROVIDER SKILLS AND SUPPORT

History to date in Australia shows that disability service providers, both government and non-government, do not spontaneously provide for people with criminal justice involvement. Services tend to be very worried about risk issues for them and their staff and not feel comfortable working with offenders. Where services do work with this population, they often do not come with an understanding of the challenges involved.

Working with people with intellectual disability and criminal justice involvement requires skills, experience and/or professional expertise that is not widely available in the current service system. The NDIA needs to engage in a strong workforce and service development programme in relation to both its own staff and disability service providers and funds managers.

In NSW, Ageing, Disability and Home Care in recent years has been doing significant work to develop the skills and aptitude of disability workers generally to work with offenders and to develop and support the capacity of some NGOs to work with people with criminal justice involvement and complex needs. The former development has been led by the Policy and Practice Team of the Clinical Innovation and Governance Directorate ADHC, and the latter by clinical and casework coordinators in the Community Justice Program (CJP). The CJP has also been doing considerable work to develop good practice in relation to addressing various specialist behaviour support needs of offenders with intellectual disability. See Section 2 for more information.

In NSW, the NDIA needs to incorporate into its operation the above roles currently taken by ADHC and ensure that similar roles are provided for in other states and territories. This will require considerable developmental work in some states and territories that do not have the established roles and skills that are now in ADHC.

One existing important training opportunity in this field is the Specialist Certificate in Criminology (Forensic Disability) at the University of Melbourne.

www.mccp.unimelb.edu.au/courses/award-courses/specialist-certificate/forensic-disability

STRUCTURES TO MEET VERY COMPLEX NEEDS

The national overview in Section 2 shows that States/Territories around Australia have developed specialist systems to meet the needs of people with disability and very complex and challenging needs. These include the Exceptional Needs Unit in SA, the Exceptionally Complex Needs Initiatives WA and the Integrated Services Program NSW. In some States, there are specific programmes for offenders with intellectual disability and very challenging needs, including the Community Justice Program NSW and the Criminal Justice Services Victoria.

The NDIA will need to squarely and carefully consider how these sorts of programs are to be transitioned into the NDIS.

COLLABORATION WITH MAINSTREAM SERVICES

As discussed in *Preparing a participant's plan* in Section 3, while mainstream services such as health have clear responsibility to provide for clinical health needs, people with intellectual disability and criminal justice involvement will often need disability support to access and work with health services. The recent Council of Australian Governments *Principles to determine the responsibilities of the NDIS and other service systems* states, 'The NDIS launch sites provide governments with an opportunity to review interactions between the NDIS and other service systems and consider any lessons arising out of a launch.'

www.coag.gov.au/node/498

The NDIA will need to have robust processes for engagement with mainstream agencies in launch areas both at a systemic level and in relation to individuals. In the absence of these processes, the COAG principles are unlikely to work in practice and people with disability, particularly people with challenging needs such as those with criminal justice involvement, are likely to continue old patterns of falling between the gaps between health and disability services.

Collaborative action will also be very important in relation to prevention of criminal justice contact and early intervention before offending patterns become entrenched. Collaboration with school education, juvenile justice and child protection agencies will be very important here.

INTERACTION WITH COMMUNITY PROTECTION AND CORRECTIONS SYSTEMS

The NDIA and disability services have roles that are in some ways complementary with those of adult corrections and juvenile justice workers. A co-operative approach is vital here but disability agencies need to be very conscious that their role is not community protection but a focus on the rights, goals and aspirations of the person with disability.

This interaction is complicated by legislation in some parts of Australia, for example the Disability Act Victoria, which incorporates a community protection function into disability services. There is no such legislation in NSW which relies on guardianship legislation for any restrictions on individual freedom of movement and with restrictions needed to be based on the interests of the individual. See *The legal framework* in Section 2.

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