

Justice MATTERS



6 April 2021

Open letter to The Hon Gladys Berejiklian, Premier, and The Hon Mark Speakman, Attorney General of NSW

Dear Premier and Attorney,

People with cognitive disability in the criminal justice system

We urge you to ensure that the 2021 state budget includes necessary funding for:

- support of people with cognitive disability in their dealings with police and the courts as victims, witnesses or people accused of crimes, and
- diversion of alleged offenders from the courts into support from the NDIS and other human services.

The overrepresentation and disadvantage experienced by people with intellectual and other cognitive disability in the criminal justice system has been long recognised. The experience of Indigenous Australians with cognitive disability is all the more challenging.

Targeted support of people with cognitive disability can have a major, positive impact.

The Justice Advocacy Service (JAS) is run by the Intellectual Disability Rights Service (IDRS) and provides support to people with cognitive disability who are victims of crime, witnesses or accused of crimes. JAS helps people understand what is happening and exercise their rights.

The current funding of the Justice Advocacy Service ends in June. This is a critically important statewide service and we call on the government to confirm it will continue.

For three years, IDRS also ran the Cognitive Impairment Diversion Programme (CIDP) in two courts. This programme went a step further than JAS. It linked people into the supports they needed for a good life and to keep out of trouble with the law. This gave magistrates confidence to make diversionary orders rather than impose jail sentences and other penalties. Diversion orders were made in over 66% of cases.

The Department of Communities and Justice stopped funding the Cognitive Impairment Diversion Programme in June 2020. However, the Department recognised the importance of a programme like the CIDP and the value of extending it to more courts.

In the coming budget, we call on the government to commit to rolling out a statewide diversion programme for people with cognitive disabilities facing criminal charges.

It is critical that Indigenous Australians receive the benefit of programmes like JAS and CIDP. Over 25% of the clients of JAS and CIDP have been Aboriginal or Torres Strait Islanders.

Programmes like JAS and CIDP would help the government to achieve the Premier's Priorities to reduce reoffending and domestic violence and the national target to reduce incarceration of Indigenous Australians. They would also facilitate implementation of the new Mental Health and Cognitive Impairment Forensic Provisions Act 2020 with its focuses on diversion and fair processes for people who have limited understanding of criminal court processes.

We ask you to meet with representatives of the signatories to this letter along with the Council for Intellectual Disability and Intellectual Disability Rights Service.

Yours sincerely,

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