



Uniting Church in Australia
SYNOD OF VICTORIA AND TASMANIA

Uniting Church in Australia Synod of Victoria and Tasmania

SUBMISSION TO THE ROYAL COMMISSION INTO VIOLENCE, ABUSE, NEGLECT AND EXPLOITATION OF PEOPLE WITH DISABILITY

Response to the Criminal Justice System Issues Paper

September 2020



Introduction

The Synod of Victoria and Tasmania is part of the Uniting Church in Australia. The Uniting Church is committed to cooperating fully and openly with the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission). In line with this commitment, the Uniting Church released a [values statement](#) which will guide the Uniting Church's engagement with and response to the Disability Royal Commission. The Uniting Church has established a National Task Group to help guide the Uniting Church's response, with the membership comprising representation from across the life of the Church and the Church's community services network. The Chair of the National Task Group is the Assembly General Secretary, Colleen Geyer, and the Executive Officer for the National Task Group is Tenille Fricker, a Senior Analyst at UnitingCare Australia. The Uniting Church is committed to a world in which barriers to participation no longer exist and the human rights of people with disability are realised.

In response to the Disability Royal Commission, the Synod of Victoria and Tasmania, in collaboration with the National Task Group, also established a Synod Task Group, with representation from across the Synod: congregations, schools and community services.

The Uniting Church in Australia, Synod of Victoria and Tasmania, welcomes the opportunity to provide a response to the Disability Royal Commission's Issues Paper on the Criminal Justice System. Appreciation is expressed to the Commission for extending the timeline for receipt of this response.

The Synod thanks those across the life of the Church who provided information for this response, especially the Uniting Church chaplains working within the prison system. Appreciation also to Tenille Fricker, Adrian Pyle, Jessica Campbell and Barbara Carter. This submission was compiled and edited by Rev Dr Andy Calder, Chairperson, Synod Task Group, Disability Royal Commission.

Context and Content

As noted in the Criminal Justice System Issues Paper "people with disability, including young people, are overrepresented across the criminal justice systems in Australia and are at heightened risk of violence, abuse, neglect and exploitation in criminal justice settings. People with cognitive and/or psychosocial disability are significantly overrepresented amongst the group who are charged with or accused of criminal offences. They are also disproportionately victims of abusive or violent criminal conduct."¹

¹ <https://disability.royalcommission.gov.au/system/files/2020-07/Issues-paper-Criminal-justice-system.pdf>

The content of this response is based on consultations with Uniting Church chaplains who provide religious and pastoral support to prisoners in Victorian prisons. In a 2017 survey of women prisoners, chaplains were by far the most trusted category of staff.²

Responses to each of the questions below are informed by their observations and knowledge of how prisons treat and manage incarcerated people with disability. The response is general in nature, does not draw directly on feedback from any prisoners, and is not informed by any research undertaken by the Synod of Victoria and Tasmania. The response refers, where relevant, to reports and accounts that are in the public domain.

Some of the questions in the Criminal Justice System Issues Paper have been responded to in more detail than others, and not all questions have been addressed. The Criminal Justice System Issues Paper outlines the main criminal justice agencies and the roles they play in the criminal justice system (pp 3-4): this response predominantly addresses the prisons part of the system.³

² *Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre*. Victorian Ombudsman. November 2017. Para 762, p 94.

³ <https://disability.royalcommission.gov.au/system/files/2020-07/Issues-paper-Criminal-justice-system.pdf>

1. What experiences related to violence, abuse, neglect or exploitation have you, a family member with disability, or someone with disability you support, had in the criminal justice system?

Instances of systemic barriers and environments which seriously impact upon prisoners with disability are as follows:

- Some people with disabilities mention lack of appropriate support services or advocates during questioning from police and that they do not understand the process that is occurring.
- Some people talk about not understanding the legal process and that advice from other prisoners or correctional staff is confusing or incorrect. Procedures or processes for appealing decisions within specified time frames are not understood and consequently not acted on.
- Law enforcement culture and prison sub-culture lead to some people with disability receiving rough treatment by arresting police officers; being pushed so that they fell or were “thrown” into a divisional van and landing on the floor with no way of supporting themselves during transport back to the Police Station.
- Competing tensions between the legal, custodial and bureaucratic systems mean that incarcerated people with disability are at significant risk of not having appropriate aids for support with eating, mobility and personal hygiene, or experiencing long delays before they are made available. “Corrections Victoria policy states that prisons are required to accommodate prisoners with a disability in a safe, secure environment which helps them adjust to the prison environment. Prisons must also provide programs that address the individual needs and offence-related behaviours of inmates”⁴.
- When issued by a treating practitioner, a medical certificate which states a particular support is ‘recommended’ rather than ‘required’ does not need to be supplied by the prison. To obtain the support, the doctor must use the word ‘required’. Not all doctors know this.
- ‘Carers’ for incarcerated prisoners with disability needing personal assistance are at times chosen from the prison population. It is unknown if any training is offered to those chosen to provide such care. The

⁴ *Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre*. Victorian Ombudsman. November 2017. Para 764, p 94.

availability of suitably trained carers for people with disability is limited.⁵ For example: if there is lack of access to mobility aids, or someone to assist, and this leads to missing a medical appointment, it may be recorded that the prisoner has refused medical care as opposed to being unable to attend the appointment. In citing such a disturbing example, attention is drawn to the Nelson Mandela Rules and national standards in which prisoners should receive the same standard of health care that is available in the community⁶.

- When being transferred to a lower security location or for particular health care needs, owing to the lack of appropriate transport, aids and equipment, the prisoner's transfer can be delayed or impeded.
- The risk of abuse, neglect or ill-treatment exists in all places where people are deprived of their liberty. This risk is heightened for people with disability, who are also over-represented in Australia's prisons, police custody and youth detention facilities.

2a. What do you think causes violence, abuse, neglect and exploitation of people with disability in the criminal justice system? What can be done to stop this from happening?

- Any system that gives significant power to one person or group of people over another has an increased risk of violence, abuse, neglect and exploitation. Such systems of power exist between police and community members, and correctional staff and prisoners. Wearing uniforms in the prison system signifies the position of the officer in the hierarchy and their level of authority. The particular needs of people with disability are at risk of being overlooked in a 'one size-fits-all' system.
- Appropriate training, supervision and accountability is needed to mitigate the disproportionate risk of violence, abuse, neglect and exploitation of prisoners with disability.
- The fragmentation of knowledge about a prisoner's medical history and incarceration history can lead to misunderstandings and/or inappropriate expectations of what a prisoner is capable of by the correctional staff. Monitoring of medications and reminders for prisoners with disability is

⁵ *Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre*. Victorian Ombudsman. November 2017. Para 782, p 95.

⁶ *Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre*. Victorian Ombudsman. November 2017. Para 531, p 70.

also of critical importance. Lack of knowledge of a prisoner's disability can lead to individual judgements and discrimination by correctional staff, and also by other prisoners. Whilst confidentiality and discretion are paramount, better training and guidelines may assist. The Corrections Act states that "prisoners who are 'intellectually disabled or mentally ill' have the right to access special care and treatment, either within the prison or outside the prison with the Governor's approval, where it is considered necessary or desirable by the medical officer"⁷.

- The Victorian Ombudsman has identified that "failure to identify and assess a prisoner's acquired brain injury (ABI) or intellectual disability can lead to a lack of adequate specialised support, mismanagement of their behaviour and potentially to unreasonable punishment. Behaviour commonly associated with ABI can often be interpreted or labelled by prison staff as 'antagonistic', 'non-compliant' or 'difficult', and the perception is often that 'this person's just a pain'. If the ABI is identified, prison staff are more likely to have an understanding of the reasons a prisoner is behaving in a particular way, and identify better ways to communicate with them and deal with that behaviour, which will produce completely different outcomes"⁸.
- Lack of clarity about bureaucratic boundaries, contract terms, and who provides and is responsible for care can impede, complicate, and deny care to people with disability. Organisations and personnel with influence include the National Disability Insurance Scheme (NDIS), Corrections Victoria, Department of Justice and Community, Department of Health and Human Services, Private prison operators, the General Manager of a particular prison, and individual Prison medical care providers.
- Audits completed and reported to independent bodies, so that areas of confusion can be identified at the earliest possible moment; this process needs to be expedited much more quickly than current process allows.
- Lack of funding and support can make it impossible for those responsible to provide appropriate care even when they wish to. The need to decide between the 'care of many' to the 'care of one' places prison staff in an unenviable position.
- Increased funding would assist but "who gets funded" is always a difficult decision within economic systems. Prisons rarely get support from the

⁷ *Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre*. Victorian Ombudsman. November 2017. Para 763, p 94.

⁸ *Investigation into the rehabilitation and reintegration of prisoners in Victoria*. Victorian Ombudsman. September 2015. Para 560, p 91.

public, corporations or political parties and organisations. Better understanding and education of society at large, about the cost to both human and economic systems of not providing appropriate preventive care and support at the earliest opportunity, may help in changing this.

The instances cited above in this section reveal the rights of people with disability under The Convention on the Rights of Persons with Disabilities (CRPD) are not necessarily well understood nor being met.

2b. In particular, what changes would help people with disability avoid the criminal justice system in the first place?

- People with disability need the same rights and opportunities as anyone else to help them avoid the criminal justice system; that being access to appropriate health care, housing, education and employment; to be valued members of healthy and diverse communities. Early interventions programs for people with disability at risk of coming into contact with the criminal justice system and improved first responses for incidents involving people with disability also need to be enhanced and resourced.

3a. What do you think prevents people with disability who have experienced violence, abuse, neglect, or exploitation from getting protection or justice from the police or the courts?

Barriers preventing access to justice include the following:

- Feelings of being judged by others.
- Being misunderstood and lack of understanding about legal processes. This includes insufficient resourcing and availability of suitable legal advocacy.
- Past experiences can prevent people with disability from engaging with services which may provide protection or justice.

3b. What problems have you had getting protection or justice from the police or the court?

Not applicable



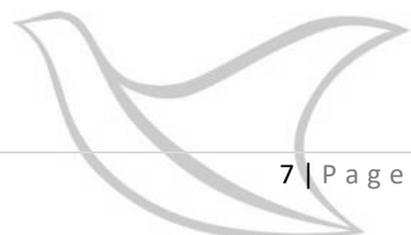
4a. What supports do people with disability need to participate in the criminal justice system on an equal footing as others without disability?

- Within the criminal justice system, anecdotally it would appear that those with socio-economic disadvantage have different outcomes to those who don't.
- While people with disability often lack wealth and social connection this is a contributing factor for many others as well. In aspiring to an 'equal footing' for people with disability, most, if not all people entering this system are reliant on their legal representation and would benefit from appropriate supports and advocates. Some tangible supports include captioning services, AUSLAN interpreters, and lawyers with training in supported decision making. A system which is genuinely interested in supportive rehabilitation and restoration is desirable rather than one which at times is viewed as a system of punishment and retribution.
- Instances where improvements have occurred are shown in the way that courts like the Assessment and Referral Court (ARC), Drug Court and Koori Court operate. Unfortunately these are only available in particular jurisdictions/areas and can only hear charges that can be heard in a Magistrates court. An expansion and adaptation of these approaches have potential to support people with disability.
- There is always a danger of focusing on how to fix a problem rather than prevent the problem.

4b. When would these supports be needed to assist people with disability who are:

- (i) victims of crime**
- (ii) witnesses required to give evidence**
- (iii) accused or suspected of criminal offences**
- (iv) convicted of criminal offences or**
- (v) jurors?**

Not applicable

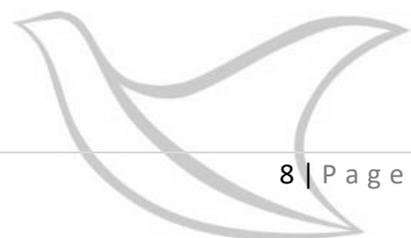


4c. What are some examples of good supports? How have these supports worked to keep people with disability out of the criminal justice system or safe within the system?

- A good example was when someone finally got access to NDIS funding whilst incarcerated. This was only achieved by much negotiation and advocacy by correctional staff workers. This allowed access to an Occupational Therapist to arrange for a motorised wheel chair and aids for eating and drinking. It was amazing to see the change in confidence and self-empowerment from the recipient.

5. How does violence, abuse, neglect or exploitation in the criminal justice system vary for particular groups of people with disability? For example, how does a person's gender, race, age, cultural or sexual identity, or geographic location (metropolitan, regional, remote) impact on their experiences of violence, abuse, neglect and exploitation?

- It is noted that prisons and units within prisons have complex and varying cultures. Many people in prison can be anti-social, have addiction issues, and/or quickly resort to violence or threats of violence to achieve what they may desire without regard for anyone else. Unfortunately for many these are the only worlds they have ever known. This creates problems for those who are a minority or seen as a minority or viewed as being an easy target for manipulation or exploitation.
- These challenges are experienced by all in the system including people with a disability. It is observed at times that people with disability may also engage in acts of violence, abuse, neglect and exploitation towards other prisoners. The particular demographic of a unit at a particular time determines which minority or minorities are disliked or taken advantage of the most at that time, and what defines that minority may change depending on who is connected to which social group.
- Any of the above situations may be influenced by particular charges or media attention which in turn contribute to these dynamics. At times a person's disability may see them spared from being targeted and/or violated.



6a. What are the experiences of First Nations people with disability engaging with the criminal justice system? For example, are the processes and services culturally appropriate and safe?

- Given this submission is limited by feedback from prison chaplains only, it is not appropriate to comment on or surmise about the experiences of First Nation prisoners with disability. It is noted however, that in recognition of significant disadvantage Aboriginal Liaison Officers provide specific support. This extra support, when provided to people with disability, may at times lead to discrimination from those ineligible to access such support.

6b. A high proportion of young people in detention are First Nations people with disability or with an undiagnosed disability. How can they be better supported to access justice when they are in the system? What should be done to help them transition out of the criminal justice system?

- First Nation peoples' engagement with the criminal justice system is well documented in Royal Commissions and other reports. It requires the social and political will to enact changes recommended in those reports in order to assess optimal transitions and improvements.

7a. What barriers are there to effectively identify, disclose and report instances of violence, abuse, neglect or exploitation in the criminal justice system?

- Prisoners who are aware may phone the Victorian Ombudsman to report instances of violence, abuse, neglect or exploitation.
- However, it is understood that all other reporting mechanisms within the prison's system are not subject to independent scrutiny. It is also understood that Independent Prison Visitors are required to report to the prison general manager on exiting the prison and not to an independent body.
- Staff who are concerned about instances of abuse and neglect, being bound by confidentiality clauses, need to rely on the processes put in place by the system. It is surmised that the necessary response is not always optimal. Information about events have considerable confidentiality and security implications, so are generally restricted to "who needs to know" and are not available generally. Beyond those areas of video surveillance any record of events is completed by staff.

7b. What types of problems have you experienced in identifying, disclosing and reporting violence, abuse, neglect or exploitation in the criminal justice system?

Not applicable

8a. What barriers are there to adequately investigate violence, abuse, neglect or exploitation in the criminal justice system?

Refer to question 7a.

8b. What is being done or should be done to encourage effective investigation and reporting of violence, abuse, neglect or exploitation in the criminal justice system when it occurs?

- It is important to address and remove systemic barriers, including prisons, to access justice, simplify legal processes and provide access to lawyers so that people with disability are not disempowered nor abused by the process. Access could be facilitated through Community Legal Centres (CLC) or other volunteer organisations providing legal education seminars.
- The installation of more cameras has had a significant impact in reducing violence, particularly by staff to prisoners.
- A clear independent body to audit, assess and investigate the care, or lack of care of people with disability, would be a significant improvement to the current system.

9. What else should we know? Have we missed anything?

- Prevention is always better than cure. Healthy societies should, and do, have low incarceration rates.
- Alternatives to incarceration should be utilised whenever possible.

Rev Dr Mark Lawrence
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Synod of Victoria and Tasmania
30 September, 2020

