

Final Report

Insights from people with lived experience of disability and the justice system

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We acknowledge the Traditional Owners and their custodianship of the lands across the State of Queensland, we pay our respects to their Ancestors and their descendants, who continue cultural and spiritual connections to Country. We recognise their valuable contributions to Australian and global society.

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Glossary and Acronyms

Acronym/Term	Explanation
Acquired brain injury	Acquired brain injury is an umbrella term that denotes a wide spectrum of brain injuries that includes traumatic and non-traumatic aetiologies. Acquired brain injury, depending on the nature of the injury, can affect physical, neurocognitive and/or psychological functioning (Teasell et al., 2007).
ADHD	Attention Deficit Hyperactivity Disorder is defined by symptoms of pervasive inattention and/or hyperactivity and impulsivity. The condition presents during childhood or in early adolescence and persists into adulthood for fifty per cent of children affected (Young et al., 2018).
AHRC	Australian Human Rights Commission
AIHW	Australian Institute of Health and Welfare
Amaroo	Amaroo Aboriginal and Torres Strait Islander Elders Justice Group
Autism spectrum disorder	Autism spectrum disorder is a lifelong neurological condition, characterised by difficulties in social communication and social interaction across multiple contexts; and restricted, repetitive patterns of behaviour, interests or activities (American Psychiatric Association, 2022).
Bipolar disorder	Bipolar disorder is a brain disorder that causes changes in a person's mood, energy, and ability to function. People with bipolar disorder experience intense emotional states that typically occur during distinct periods of days to weeks, called mood episodes. These mood episodes are categorized as manic/hypomanic (abnormally happy or irritable mood) or depressive (sad mood). People with bipolar disorder generally have periods of neutral mood as well (American Psychiatric Association, 2022).
CALD	Culturally and linguistically diverse
CJS	Criminal justice system
Cognitive disability	Cognitive disability is a non-diagnostic umbrella term denoting ongoing challenges in intellectual functioning (including reasoning, problem solving and learning) and in adaptive skills (i.e. everyday social and practical abilities) (Schalock et al., 2010). Diagnostic labels which sit under this term include autism spectrum disorder, acquired brain injury, intellectual disability and fetal alcohol spectrum disorder.
CJG	A Community Justice Group is a community based response to local issues facing Aboriginal and Torres Strait Islander communities. CJGs work cooperatively with magistrates, police, corrective services personnel and staff from other government agencies and community organisations. They are led by a CJG Coordinator who assists CJG members (local Elders and Respected Persons) and have an overarching goal of reducing the over-representation of Aboriginal and/or Torres Strait Islander people in the criminal justice system (Community Justice Group Program Queensland Courts).
CREST	Community Re-Entry Services Team
d/Deaf	<i>Deaf</i> (with a capitalised D) refers to people who identify as part of the signing Deaf community; <i>deaf</i> (with a small d) describes the physical condition of not hearing in people who do not identify as members of the Deaf community (Aussie Deaf Kids, 2022).
DJAG	Department of Justice and Attorney-General, Queensland
DLD	Developmental Language Disorder (DLD) is a language disorder that surfaces during the individual's early developmental period. An individual

Acronym/Term	Explanation
	with DLD has consistent difficulties in using language in different forms (speaking, writing, using sign language, or other) due to deficits in understanding or production (American Psychiatric Association, 2022).
DRC	Disability Royal Commission. This is the short term for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability
DSP	Disability Support Pension
FASD	Fetal alcohol spectrum disorders (FASD) is a non-diagnostic umbrella term. FASD covers the full range of possible birth defects and/or developmental disabilities that can be caused by exposure to alcohol in utero. The term FASD emphasises the fact that prenatal alcohol exposure can lead to a spectrum of physical, cognitive and developmental outcomes (McLean & McDougall, 2014).
First Nations Australians	Aboriginal and/or Torres Strait Islander people
FNQ	Far North Queensland
HASI	Hayes Ability Screening Index
HRW	Human Rights Watch
Intellectual disability	Intellectual disability is a condition characterised by significant limitations in both intellectual functioning and adaptive behaviour that originates before the age of 22 (American Association on Intellectual and Developmental Disabilities, 2022, para 1).
ITP	Independent Third Person
KICA	Kimberley Indigenous Cognitive Assessment
Learning disability/Specific learning disorder	Learning disability in the Australian context refers to neurodevelopmental disorders which can impede a person's ability to learn or use specific academic skills, for example, dyslexia. The impact of the disability is not likely to impact on a person's whole life, but more in specific contexts, such as the educational setting (American Psychiatric Association, 2022).
MOU	Memorandum of Understanding
MINI	Mini International Neuropsychiatric Interview
NDD	Neurodevelopmental disorder (NDD) is an umbrella term for conditions in which the determining feature is disruption to brain development during critical embryonic and childhood developmental periods that occur prior to puberty (Thapar et al., 2017). Neurodevelopmental disorders include autism spectrum disorder (ASD), attention deficit hyperactivity disorder (ADHD), some forms of acquired brain injury, intellectual disability, fetal alcohol spectrum disorder (FASD), developmental language disorder (DLD) and specific learning disorder (SLD) (American Psychiatric Association, 2022).
NDDA	National Disability Data Asset
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
Northern Australia	Northern Australia is defined by the Australian Government as all of the Northern Territory and those parts of Queensland and Western Australia above the Tropic of Capricorn (Office of Northern Australia Department of Infrastructure, Transport, Regional Development, Communications and the Arts)
OOHC	Out of home care
OPA	Office of the Public Advocate (Victoria)

Acronym/Term	Explanation
OPM	Operational Procedures Manual
PACT	Protect All Children Today
Paraphilia	A disorder involving atypical sexual interests (American Psychiatric Association, 2022).
PTSD	Post Traumatic Stress Disorder
Psychosocial disability	The experience of disabling barriers that may arise for a person with severe and persistent mental illness, which can include people with diagnostic labels such as schizophrenia, bipolar disorder and post-traumatic stress disorder (Hayes et al., 2018).
QAI	Queensland Advocacy for Inclusion
QCS	Queensland Corrective Services
QPS	Queensland Police Service
Schizoaffective disorder	Schizoaffective disorders is a disorder characterised by the occurrence of both schizophrenia- and affective disorders-like symptoms (Pagel et al., 2014).
Schizophrenia	Schizophrenia is a severe, chronic mental disorder characterised by disturbances in thought, perception and behaviour (American Psychiatric Association, 2022).
SLD	Specific Learning Disorder. See Learning disability .
UN	United Nations
WASI	Wechsler Abbreviated Scale of Intelligence

Executive Summary

The following report, *Insights from people with lived experience of disability and the justice system* has been commissioned by the Queensland Department of Justice and Attorney-General (DJAG). A research team from The University of Queensland explored the lived experiences of people with disability in contact with the criminal justice system (CJS) in Queensland. The project, conducted in 2022-2023, draws upon the expertise of people with disability, family members of people with disability and practitioners and professionals who have supported people with disability in contact with the CJS. The project is informing the Queensland Government's commitment to consider the development and implementation of a data reporting system that identifies people with a disability who are interacting with the criminal justice system.

Research aims

The study has the following aims:

- To examine current Australian and international research literature on criminal justice services for people with disability who are offenders or alleged offenders, including:
 - the common lived experiences of people with disability
 - the key characteristics and behaviours that people with disability may present with in criminal justice settings
 - the challenges that exist in supporting this group; and
 - what is known about relevant data collection and reporting systems
- To explore the perceptions of First Nations Australians and non-Indigenous Australians with disability in contact with the Queensland CJS as offenders or alleged offenders about their experiences with criminal justice agencies and professionals
- To ascertain the views of people with disability who have been in contact with the CJS as offenders or alleged offenders about their personal information and how this should be collected and shared between criminal justice agencies
- To investigate the perceptions of practitioners/professionals who support offenders or alleged offenders with disability in contact with the Queensland CJS regarding the nature and capacity of criminal justice service responses to support people with disability
- To discover the views of practitioners/professionals who support offenders or alleged offenders with disability in contact with the Queensland CJS regarding the content and process for data collection and sharing between agencies as it relates to people with disability.

Method

The project involved two key activities which together addressed the above aims:

- 1) A targeted *literature review*.
- 2) A *qualitative study* of the views and experiences of people with disability, family members and practitioners/professionals of the CJS in Queensland and how it responds to people with disability.

Literature review

A targeted literature review which focused primarily on sociological and social scientific literature was undertaken for the study. The review reported on recent and relevant Australian and international scholarly literature (n=154) and grey literature (n=24) including reports and submissions from relevant organisations.

Qualitative study

Qualitative semi-structured interviews were conducted with 12 adult participants with disability who had been in contact with the Queensland CJS in the past five years as alleged offenders or offenders. Participants were identified through agencies which support this group, including disability support agencies, advocacy organisations, agencies which support people with mental illness, non-government prisoner support agencies, and Aboriginal and Torres Strait Islander community services. The majority of participants were male (n=10), and 8 people were First Nations Australians. Most people had more than one type of disability, with all having

some form of cognitive and/or psychosocial disability. Half of the sample resided in metropolitan areas in Queensland; five came from regional areas and one person from a remote area. Interviews with people with disability catered for people's different communication styles. Participants were supported to share their experiences of the CJS on their own terms.

Semi-structured interviews were also undertaken with 5 family members of people with disability who had been in contact with the CJS. Family members were asked to describe their understanding of their family member's experience with the CJS.

In addition, the research team also conducted semi-structured interviews with 28 practitioners and professionals who advocate for and/or provide direct support to people with disability in contact with the CJS. Participants in this group came from disability organisations, legal and advocacy services, non-government and government services for prisoners, and Aboriginal and Torres Strait Islander Community Justice Groups and agencies (see Appendix Six for the list of organisations). This group provided information on the service challenges in supporting people with disability at the various phases of CJS contact.

Thematic analysis was undertaken on interview data, firstly summarised into codes which were later subsumed into interpretative themes. Recommendations presented in the report were derived from discussion with all groups of participants as to what changes they felt were needed in the CJS in Queensland.

Working with First Nations Australian people and communities

Recognising the significant disadvantage that First Nations Australian people experience in Australia, as well as their over-representation within the CJS, the research team actively sought the advice and guidance from First Nations Australian communities within this project. A strength of this study has been the strong representation of First Nations Australians with disability in the participant sample (comprising two-thirds of the sample). Elders from communities in Far North Queensland (FNQ) and Toowoomba region provided important cultural guidance to conducting interviews and valuable feedback and advice regarding First Nations Australian content in this report. The research team is extremely grateful for this assistance.

Key themes from the literature

The need for recognition and support of people with disability at all stages of the CJS

People with disability in contact with the CJS can experience significant disadvantage related to high rates of poverty, homelessness, substance abuse, poor health and mental illness (Dias et al., 2013b). When the CJS fails to recognise or understand the nature of a person's disability, the person's difficulties are compounded. Many people with disability have experiences as both victims and offenders, and contact with the CJS can start from an early age (Law Council of Australia, 2020). First Nations Australians with disability are significantly more likely to experience early and frequent contact with the CJS (Baldry et al., 2015).

This review found that police require ongoing and repeated exposure to knowledge about disability in order to effectively identify and respond to people with disability (Viljoen et al., 2017). Similarly, more effective mechanisms are needed within the court system to assess disability to avoid adverse court-based outcomes for defendants with disability (Chaplin et al., 2021). It was also found that prison systems across Australia and internationally needed better screening of prisoners with disability, but the screening could only be effective if this was accompanied by the provision of relevant resources to support prisoners with disability (Marxhall-Tate et al., 2020).

A growing awareness of the complexity of disability

The literature in this review has shown that there is a growing interest in considering how people with different disability types fare within the CJS. It is acknowledged by many authors (for example, Baldry et al., 2013; Ellem et al., 2020) that people with disability in the CJS have multiple diagnoses, and that these must be understood within the context of a person's life. Many people with disability in contact with the CJS experience hardship in relation to many aspects of daily living, including discrimination, poverty and ill-health. These factors, alongside the person's disability, require a holistic and individualised response from the CJS (DRC 2020). Frequent involvement with the CJS has been regarded as a failure by CJS professionals to adequately account for both the person's disability and the social conditions facing the person (Dowse et al., 2021).

Limited knowledge about the sharing of individual data on people with disability between criminal justice agencies

The limited research both in Australian and internationally on how information about people with disability is shared between the different stages of the CJS indicates that better coordination is needed across all systems (Landsdell et al., 2018). The advent of the National Disability Insurance Scheme (NDIS) throughout Australia and the emphasis on individualised, market-based supports for people with disability, places more demands on CJS professionals to facilitate access to such supports¹. This requires an integrated and responsive CJS which liaises with supports in the community (Dowse et al., 2019).

Findings from participants with disability and family members of people with disability

Living with disability

All participants with disability in this study were people with cognitive and/or psychosocial disability. Having a disability impacted people in different ways. Some participants were reticent in disclosing their disability to others as this was seen as stigmatising. Others found communication with others and understanding social cues difficult because of their disability. Some aspects of having a disability was debilitating for a few participants – often related to symptoms of mental illness, which could lead to social isolation and difficulties in self-regulating behaviour arising from personal trauma.

Participants with disability interviewed in this study were recruited through community organisations, and as such were accessing some form of formal support at the time of the study. Poverty, homelessness, loneliness, violence and abuse were common experiences among this group. Involvement in the CJS often centred around offences relating to physical assault, public nuisance, domestic violence and theft. Some reported offences related to the person's problematic substance use, and a small portion related to sexual offences.

People with disability and policing

Many participants with disability had experiences with police which involved seeking assistance from them at a time of crisis, as well as other times when they were the focus of police investigation of a crime. Many participants identified negative experiences with police, which often shaped their perspectives of police as unreliable or untrustworthy. This lack of trust in authority was most evident in the accounts of First Nations Australians with disability who reported incidents of continued surveillance by police officers, feeling a lack of cultural safety within interactions with police, and some examples of police neglect and brutality. First Nations Australian participants from FNQ unanimously reported experiences of racism from all interactions with the FNQ police force.

Participant accounts of police understanding and accommodation of disability pointed to inconsistent practices. Family member participants cited examples where the person with disability did not have an independent third party or support during police interviews. It was not clear from participants' accounts if such supports were offered. There were also examples where police intervention lacked understanding of how to effectively manage the behaviour of a person with disability, leading to an escalation in conflict with the person. There were some reports of police assisting people with disability to access important medical and mental health

¹ The NDIS provides several types of supports to people with disabilities. They are categorised into four main types: *Core supports* (supports designed to help with day-to-day activities, such as personal care, household tasks and community participation); *Capacity building supports* (supports which assist people with disabilities to build skills and achieve goals, such as employment related skills, accessing further education); *Capital supports* (supports such as assistive technology, home modifications and equipment); and *Support Coordination* (assistance from a support coordinator to navigate the NDIS and find the right services and supports) ([Supports funded by the NDIS | NDIS](#)).

On 18 October 2022, the Honourable Bill Shorten, Commonwealth Minister for the NDIS, announced the NDIS Review <https://www.ndisreview.gov.au/about/terms-of-reference>, which is examining the design, operations and sustainability of the NDIS and ways to build a more responsive, supportive and sustainable market and workforce.

The NDIS Review is examining areas of the Scheme that crossover with, and impact, mainstream service systems, including justice. As listed in the NDIS Review Terms of Reference (<https://www.ndisreview.gov.au/about/terms-of-reference>), the Independent Review Panel will make findings and recommendations to Disability Ministers on "*efficiencies within the Scheme and improving the interaction between the NDIS and other significant related policies and systems, including mainstream services delivered by the Australian Government, the states and territories, local government, and the community sector*" (Part 1, e).

The findings and recommendations in the NDIS Review final report (to be released by October 2023) will include targeted recommendations for disability mainstream interface areas, including the justice system

care. However, these were outweighed by reports of a lack of police knowledge and recognition of the needs of people with disability.

People with disability and the courts and legal system

Appearing before the court for participants with disability and their families was described as a highly stressful experience. Participants conveyed a sense of alienation in court processes, related to a lack of understanding and acceptance of disability by court authorities, as well as a lack of cultural responsiveness to First Nations Australians with disability.

Finding appropriate and affordable legal representation was a challenge for several participants. These participants often reported a lack of confidence in Legal Aid representation, including lawyers' capacity to understand the nature of the person's disability. Having a family member or other advocate present at the time of a court hearing was seen as extremely helpful to some participants, as they could assist the person with disability to feel more at ease within the courtroom, as well as provide important information regarding the person's disability and the community supports available to them.

People with disability and the prison system

Participants with disability who had been in prison spoke of the many challenges of living in such an environment. Psychological and physical safety was a key concern for all of these participants. This included managing anxieties related to sharing a cell with another prisoner, avoiding intimidation from prison officers and other prisoners, and keeping oneself occupied when inside.

Accessing support inside prison was identified to be a complex endeavour. There were mixed opinions about the medical intervention received, with some reports that the controlled environment presented an opportunity for the person to receive appropriate psychotropic medication and/or engage in programs to address drug addiction. In contrast, some participants expressed concerns about the efficacy and side effects of some medications available in prison. It was unclear if any follow-up from prison staff occurred when there were medication concerns. Counselling supports to prisoners appeared to be helpful, but a few participants were reluctant to engage with such supports, either out of fear that personal information would be shared with other prisoners, or because it was perceived that counsellors would only provide the "bare minimum" of support. One participant with physical disability discussed their experience of receiving support from prisoner carers in Queensland corrective service facilities. Their account highlighted some of the risks associated with the prisoner carer role, including the potential to exploit the person with disability.

Participants with disability who shared their experiences of leaving prison often spoke of poorly resourced and planned transitions to the community. Difficulties were encountered in accessing safe and secure housing, accessing finances, continuing prescribed medication, and rebuilding relationships with family members.

People with disability and parole and probation

Many of the accounts regarding community-based sentencing orders lacked detail. Participants with disability often had difficulty describing and/or recalling the type of order they had been given. A few participants appeared to have problems attending to the requirements of their orders, and one family member expressed frustration with community corrections officers for failing to offer therapeutic programs for her son with psychosocial disability. One participant with psychosocial disability shared his appreciation of his parole officer for their open and honest communication with them and felt that parole officers who engaged in harm minimisation practices were supportive of ex-prisoners who had substance addictions.

Information sharing within the CJS

Family member participants were more forthcoming about information sharing processes in the CJS than participants with disability. Family members were actively involved in advocating for their relative with disability and often felt that not enough attention was paid to understanding and documenting the supports the person with disability needed. Concerns were raised regarding consent and confidentiality in gathering information, as well as the accuracy of information. Poor practices in information gathering and sharing could have negative implications for people with disability, including eviction from supported disability accommodation, and in the views of family members, unfair sentencing of the person with disability.

Findings from practitioners and professionals

Factors in CJS contact

Practitioners and professionals interviewed for this research mostly supported people with cognitive impairments in contact with the CJS. This included people with intellectual disability, acquired brain injury and autism spectrum disorder. Many people had co-occurring psychosocial disability and physical or sensory disability, ADHD and/or chronic poor health often associated with problematic substance use. Practitioners and professionals reported that this group often experienced early life disadvantage and unresolved trauma; had been victims of crime, and lacked financial, material and personal resources which could lead to a cycle of criminalisation. They conveyed that many people with disability in contact with the CJS had been charged with low level or summary offences and that these offences could accumulate and lead to harsher sentencing.

People with disability and policing

Several difficulties in interactions between people with disability and the police were described by professionals and practitioners. This could often include an escalation to more serious charges against the person with disability, coupled with communicative challenges between police and people with disability, and overly aggressive police responses. First Nations Australian practitioners felt strongly that police harassment and targeting of Aboriginal and Torres Strait Islander people with disability was a key factor driving their over-representation in the CJS.

Professionals and practitioners provided many examples where police could better respond to people with disability. This included better identification and acceptance of the presence of disability, involving support people in police interviews, and providing information about police processes in the form of Easy Read resources. There was strong agreement that diversion to other services was a more supportive response to people with disability. The development of an alternate or co-responder model to people with disability was also recommended.

People with disability and the courts and legal system

Practitioners and professionals often played an active role in supporting people with disability in navigating courts and legal processes. Some participants observed significant time pressures within the court system – a problem which can impact any defendant - but which undermined safe and fair legal processes for people with disability. This meant that important contextual factors which contributed to a person's behaviour were often overlooked within court hearings and as a result people with disability were at risk of experiencing adverse outcomes.

Overall, it was felt that the legal system lacked the necessary resources to cater for people with disability. In the case of First Nations Australians with disability there was a failure to modify practices to ensure cultural appropriateness. For example, it was noted by Aboriginal and Torres Strait Islander Elders from Far North Queensland that culturally appropriate neuropsychological/cognitive assessments were not available and there are currently inadequate financial resources for First Nations Australian community justice groups to employ appropriate practitioners to undertake this critical and necessary work.

People with disability and the prison system

Practitioners and professionals identified many factors that contributed to the vulnerability of people with disability inside corrective service facilities. These included punitive responses to behaviour associated with cognitive disability or mental health conditions; difficulties for prison staff to attend to complex physical care and personal hygiene needs of prisoners with disability; challenges for people with disability to apply for parole; and the potential psychological distress for people with disability placed in safety or detention units.

Participants stressed the need for routine assessment on admission to prison which focuses on functional capacity assessment rather than diagnostic assessment. Where a person does not have a confirmed diagnosis, diagnostic assessment and functional assessment should go hand-in-hand to give a holistic picture of the person's support needs and ensure appropriate interventions are in place. This highlights the important role played by disability specialist staff serving at correctional facilities. Assessments were also considered important to establish a person's eligibility for NDIS supports. However, the lack of funding available to

outsource assessments means there is significant pressure on existing assessment and referral teams to undertake the often-extensive work required to progress timely NDIS eligibility requests whilst people are in custody.

Several improvements in support to prisoners with disability were noted by participants that have occurred as a result of the implementation of dedicated disability specialist staff in some corrective service facilities. However, concern was expressed with the lack of commitment to the ongoing funding of these positions. Support to prisoners with disability was considered difficult due to the often short timeframes people were in custody. These short times were often related to the types of offences people committed and the fact that people may spend proportionally significant time on remand and less time in custody as a sentenced offender. A lack of accessible facilities were noted for people with physical disability, as well as a lack of timely mental health care. Many prisoners with disability were reported to have little or no access to skills development programs as these often did not cater for the access needs of people with cognitive disability.

Several practitioners and professionals commented on the current Prisoner Carer program in some prisons where in-prison carers are matched to vulnerable people in mainstream corrective services facilities. Concerns were expressed about the absence of safeguards and mechanisms for equality, safety, and oversight of the program².

People with disability and parole and probation

There was a universal perception by practitioners and professionals that people with disability commonly struggle to adhere to probation and parole requirements. It was felt that further support was needed to prevent people with disability from breaching their orders and being re-incarcerated. This was identified as a major concern for First Nations Australians with disability and many participants argued that parole and probation orders should be replaced with more supportive and adaptive community-based options. Good practice in parole and probation was identified as when personnel are able to recognise that attending a community corrections facility can be 'triggering' for ex-prisoners with disability.

Information sharing

On the whole professionals and practitioners were in favour of appropriate information sharing about people with disability within and beyond the CJS. Information sharing about an individual was seen as helpful in tailoring services to the person. Data collection at an aggregate level was seen to assist in reviewing services and in policy development.

Participants stressed the importance of obtaining the person's consent to collect information. There was also recognition that some people will require a supported decision-making approach or may not be able to provide consent, and so guardian consent may be required. In addition, confidentiality was considered extremely important, and it was expressed that clearer guidelines and transparency were needed in information sharing protocols.

Improving experiences and outcomes

A system-wide relationally based case management approach was identified by participants as a key factor that would improve outcomes for people with disability in contact with the CJS. This approach was described as person-centred, strengths-based, trauma-informed and rights-based. The helping relationship with the person with disability would be ongoing, so that trust could be established. A central feature of such an approach is the practitioner accepting potential setbacks for the person with disability and to work with the person even when they were experiencing difficulties. In addition, honest communication with the person about what supports are possible was also seen as essential.

² It is important to note that QCS provides in addition to the Prisoner Carer Program, a Prisoner of Concern policy which ensures prisoners with disability receive support and protections while in prison. A Prisoner of Concern is a prisoner who is identified as having prominent and/or profound factors that significantly impair their functioning, and therefore require greater oversight and monitoring than that of the general prisoner population. A Prisoner of Concern may receive a range of additional interventions through an Intensive Management Plan including increased contact with a psychologist, counsellor, education officer or health services. They may also have their accommodation and medical needs regularly reviewed and managed in ways that better suit their presenting needs (<https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/20eacc9e-cb7c-47a6-8106-69e68b46dbff/prisoners-of-concern-copd-redacted.pdf?ETag=b35c2754b221994ac3a71491728f56fe>).

Effective collaboration between agencies was also identified as essential to deliver good outcomes for people with disability in contact with the CJS. These collaborations could be both formal and informal, and stakeholders need shared purposes and to form a partnership with the person with disability.

First Nations Australian practitioners and professionals spoke of the importance of a culturally holistic approach to supporting Aboriginal and Torres Strait Islander people with disability. This encompasses care for social and emotional wellbeing, including spiritual, cultural and kinship connections. An example of this approach is seen in the work of the Amaroo Aboriginal & Torres Strait Islander Elders Justice Group (hereafter referred to as Amaroo) in FNQ.

Recommendations

Overarching

1. Develop a Queensland Disability Justice Strategy to address unequal access to justice for people with disability. The strategy would identify key areas for priority actions and provide an overarching framework and ongoing agenda for reform and continuous improvement across the CJS. The strategy should be co-designed with people with lived experience of disability and the CJS and include people with lived experience in its governance mechanisms and processes and its evaluation. Within this strategy, there is a need to support people with disability leaving the CJS (in terms of housing and finances); and a need for better assessment and recognition of disability in the CJS.
2. Develop a First Nations Disability Justice Strategy, which aligns with the Queensland Disability Justice Strategy (see 1. above) and which integrates Indigenous knowledges to address the specific historical, cultural and social context and experiences of First Nations Australians with disability in the CJS. The strategy should be co-designed with First Nations Australians with lived experience and their communities, and include First Nations Australians in its governance mechanisms, processes and evaluation.—The development of the strategy should consider further economic investment in First Nations Australians community justice groups and take account of the values, principles, and practices embedded in the Amaroo Aboriginal and Torres Strait Islander Elders Justice Group model and other successful First Nations Australians community justice groups.
3. A key early activity of a First Nations Justice Strategy should be to audit the cultural appropriateness of systems and processes of the Queensland CJS including screening and assessment, therapeutic interventions and advocacy and support models and address the provision of specialist clinicians to work with First Nations Australians with disability in contact with the CJS. This process should be conducted by suitably qualified First Nations specialist professionals.
4. Any strategies (1. and 2. above) developed should consider issues for rural, regional and remote areas of Queensland and include:
 - an audit of specialist services available in regions including access to
 - Independent Third Persons or Support Persons
 - legal representation
 - appropriate and timely assessment
 - disability support services.
 - feasibility assessment of a 'telehealth' type model for access to specialist advice.
5. Focus funding on prevention and early intervention for vulnerable/at-risk people with disability at the earliest point in criminal justice contact. Examples include:
 - enhancement of a co-responder and/or alternate responder models (see 11. below)
 - non-legal advocate programs (such as the Queensland Advocacy for Inclusion (QAI) Justice Support Program)
 - improving accessibility of, and integrated referral process for support services in the community.

6. Consider developing and implementing an end-to-end case management model for people with cognitive disability in their criminal justice interactions, from earliest contact with police to exit from custody. This could utilise, adapt or expand on existing or previously evaluated models used in Queensland or elsewhere including the QAI Justice Support Program, NSW Justice Advocacy Service and the NSW Cognitive Impairment Diversion Program.
7. Increase capacity for independent advocacy and support to be provided for people with disability at all points of the CJS (see 5. above for exemplar models).
8. Enhance awareness of the functional impact of disability for the CJS workforce at all stages and in all agencies in recognition that incarceration and punishment should be a last resort in responding to people with disability who come in to contact with the CJS. This could be achieved through the development and provision of cross-systems training, education and supervisory opportunities. People with disability and First Nations Australian people with disability who have lived experience of the CJS should be central to the co-design and co-delivery of knowledge enhancement strategies and activities.
9. Continue to review the service delivery model of forensic disability services to ensure safeguards for people with cognitive disability (with and without mental health issues) on forensic and other orders.
10. Development of new programs and processes for First Nations Australian people and non-Indigenous Australians with disability should be co-designed with people/First Nations Australians with disability and their communities who have lived experience of the CJS to ensure that people with disability are included in the planning, design, and evaluation of services and supports.

Policing

11. Extend the current co-responder model and consider the implementation of an alternate responder model which uses peer workers and trained practitioners with a trauma-informed and complex disability lens to focus on de-escalation in police interactions and diversion from the police and the CJS more generally.
12. Enhance procedural efficacy and accountability in recognising people with disability who are 'at-risk' of having impaired decision-making capacity, that is, not understanding and participating safely in police processes of interview and charge in line with an adult safeguarding approach. This could be achieved through targeted funding for a relevant training program.
13. Undertake a review and update of the content and effectiveness of current policy and processes set out in the Queensland Police Service (QPS) Operational Procedures Manual (OPM) in relation to people with disability. This includes but is not limited to Section 6.3 which may be expanded to acknowledge that officers should seek advice from support persons present to inform the officer's evaluation of the person's disability and relatedly Section 6.3.4 where stations and establishments are required to maintain (revising six monthly) a list of support persons appropriate for their area of responsibilities.
14. Strengthen assistance for police to ensure that provisions set out in the current QPS OPM are appropriately implemented. This could take a similar form to the current Legal Aid Queensland Youth Legal Advice Hotline, which could be expanded to include advice regarding suspects with impaired capacity.
15. Improve availability of support for vulnerable persons at police stations and ensure that independent third-party support persons are adequately trained to assist with rights promotion and communication in police interviews. This could draw on the principles, approach and mechanisms of the Protect All Children Today (PACT) model currently utilised for vulnerable victims and witnesses in court contexts in

Queensland but focus on content and advice appropriate to support Police knowledge of working with vulnerable persons and their independent support persons.

16. Continue to develop capability within QPS complaints processes for specialist provision of support for people with disability to report misconduct or unfair treatment during interrogation and provide education to the wider stakeholder support system to utilise this process which may assist people with disability to make reports.
17. Continue QPS activities to establish Domestic and Family Violence and Vulnerable Persons Units in police districts, and the State Disability and Elder Abuse Coordinator provide education and training to members of these units to support people with disability interacting with police.
18. Introduce at local, community levels, a specialist committee that ensures Aboriginal Police Liaison Officers are used appropriately and effectively.

Courts and Legal

19. Explore additional opportunities for court diversion for people with cognitive disability (who may also have co-occurring psychosocial disability).
20. Implement a justice advocacy and support service which specifically includes court and other relevant support services.
21. Consider opportunities for more timely screening for disability at court and expanded assessments that may be provided to the court..
22. Develop specialist accessibility provisions for people with cognitive disability who are required to attend court. These would include for example:
 - court familiarisation processes
 - ensuring physical accessibility
 - providing accessible information about court processes.

Prison

23. Enhance capacity for screening for disability at intake with a particular focus on functional assessment to determine supports required in custody. Where diagnostic assessment is required, combine this with functional assessment. Consider the role of disability specialist staff in this process.
24. Further develop and expand on a more individual approach to the management of prisoners with cognitive disability who are 'at risk' in the prison environment. This could be achieved through expansion of the "Prisoner of Concern" model already being implemented in Queensland Corrective Services contexts.
25. Provide long-term secure funding for dedicated disability specialist staff to be available within all correctional facilities throughout Queensland.
26. Ensure that in-prison programs are inclusive of, accessible to or specifically designed to accommodate the support needs of people with disability to enable them to participate.
27. Develop a more effective referral system prior to and post-release. This could be enhanced with clearer Memorandums of Understanding (MOUs) between Queensland Health and Queensland Corrective Services (QCS), NDIS and QCS and which would be applicable in all regions of Queensland.
28. Develop and provide accessible information about services in the community for people with disability to assist with pre-release planning.

29. Undertake an evaluation of the Prisoner Carer's Program to ensure adequate training, safeguarding and transparency of outcomes.
30. Enhance training for Corrections Officers in understanding prisoner vulnerability, cognitive impairment and complex trauma.

Community Corrections/Post-Release

31. Development of a specialist wraparound model to ensure effective re-entry and maintenance of ex-prisoners with cognitive disability in the community.
32. Provide a dedicated community-based small-group intervention service for men and women with disability who have experienced violence, especially sexual violence or who are perpetrators of domestic violence. This should be appropriately resourced so that it is available in all regions of Queensland.
33. Increase availability of step-down accommodation/housing and specialist supported independent living to community housing.

Data and Information Sharing

34. Any approach to developing a framework for data and information sharing must balance the right to privacy of individuals and their personal information with the need for information sharing which can be critical for safeguarding and well-being and for effective service delivery.
35. Implement a supported decision-making model to enable people with cognitive disability and those at risk of decision-making capacity limitations to provide informed consent to information sharing about them.
36. Articulate intra- and cross-agency (Justice, Health, Disability, Safeguarding agencies etc) priorities for data and information sharing which differentiate processes of data linkage for aggregation and reporting from those related to client management data sharing and which clearly identify the purposes, benefits and risks for all stakeholders in terms of the need for information sharing, safeguarding and privacy.
37. Develop information/data sharing framework and agreements within CJS agencies and across CJS, Health and Community including data dictionaries, protocols for access requests and responsibilities regarding ethical use of any data.
38. Undertake a thorough review of legislative, policy and technical constraints and enablers to data and information sharing between agencies including human rights instruments, privacy legislation, and agency specific interpretation.
39. Utilise learnings from the National Disability Data Asset Pilot to build system capability for effective data capture and linkage across justice and disability support systems.
40. Given that disability is inconsistently identified or not identified at all in and across multiple agencies of the CJS and in other community providers, the introduction of a system-wide 'at risk' flag or register may be considered subject to privacy considerations. In the absence of any confirmed diagnostic information a "person of concern" may be identified by any agency with which the person interacts which may point to the presence of disability and so alert CJS personnel to the possible presence of vulnerabilities related

to the need for supports. This can ensure equitable access in relation to CJS processes, with potential markers including the following:

- adult guardianship orders
- support person having been called by police
- engagement with disability advocacy agencies
- NDIS participation
- being a recipient of a disability support pension
- legal representatives express concern about capacity (but may not action)
- courts and judicial personnel may note concern but are unable to act on those
- family member having made representation to CJS agencies
- screening or other assessment in custody
- self-identification as a person with disability

REVIEWED REPORT

1. Introduction

The Queensland Department of Justice and Attorney-General has commissioned the University of Queensland to undertake a project to investigate the lived experience of people with disability in contact with the CJS. DJAG has recognised that people with disability are over-represented in the CJS and there is an absence of reliable information to understand the lived experiences of this group in the justice system. As part of an election promise, the Queensland government has commissioned this project as one of the set of strategies aimed at making the Queensland CJS more responsive to people with disability.

1.1 Research aims

This study draws upon the expertise of people with disability, family members and practitioners/professionals to address the following aims:

- To examine current Australian and international research literature on criminal justice services for people with disability who are offenders or alleged offenders, including:
 - the common lived experiences of people with disability
 - the key characteristics and behaviours that people with disability may present with in criminal justice settings
 - the challenges that exist in supporting this group; and
 - what is known about relevant data collection and reporting systems
- To explore the perceptions of First Nations Australians and non-Indigenous Australians with disability in contact with the Queensland CJS as offenders or alleged offenders about their experiences with criminal justice agencies and professionals
- To ascertain the views of people with disability who have been in contact with the CJS as offenders or alleged offenders about their personal information and how this should be collected and shared between criminal justice agencies
- To investigate the perceptions of practitioners/professionals who support offenders or alleged offenders with disability in contact with the Queensland CJS regarding the nature and capacity of criminal justice service responses to support people with disability
- To discover the views of practitioners/professionals who support offenders or alleged offenders with disability in contact with the Queensland CJS regarding the content and process for data collection and sharing between agencies as it relates to people with disability.

The project utilises two key activities which together address the above aims:

- 3) A targeted *literature review* which examines the current knowledge base from relevant Australian and international scholarly and grey literature on the involvement and experiences of the CJS for people with disability.
- 4) A *qualitative study* of the views and experiences of people with disability, family members and practitioners/professionals of the CJS in Queensland and how it responds to people with disability.

2. Literature Review

The ways in which criminal justice systems respond to vulnerable populations is an area of growing interest to professionals, researchers and policymakers. People with disability who come into contact with police, courts and corrective services facilities can experience significant challenges in negotiating the CJS. There are ongoing concerns about their over-representation within these contexts and the appropriateness of criminal justice systems to detain people with disability as prisoners and offenders, when the factors leading to criminal justice involvement are often associated with social disadvantage and a lack of understanding about disability. This situation is exacerbated for First Nations Australian people with disability, who are exposed to individual, institutional and structural racism and continued cultural dispossession.

People with disability who come into contact with the CJS are generally a group of people who experience significant social disadvantage. The vast majority of people in this group have particular forms of disability related to cognitive and mental health challenges. *Cognitive disability* is a non-diagnostic umbrella term used in this review to denote ongoing challenges in intellectual functioning (including reasoning, problem solving

and learning) and in adaptive skills (i.e. everyday social and practical abilities) (Schalock et al., 2010). The term is associated with neurodevelopmental disorders such as intellectual disability (including borderline, mild, moderate, severe, profound and unspecified intellectual impairment (World Health Organisation, 2017)). The majority of people in contact with the justice system with intellectual disability fall within the borderline and mild range of impairment (Catalano et al., 2020). Cognitive disability may also encompass people on the autism spectrum (American Psychiatric Association, 2022); people who have an acquired brain injury (an injury that can occur during childhood or later in life) (Teasell et al., 2007) and people with fetal alcohol spectrum disorder (FASD) (Bower et al., 2018). The aetiology of cognitive difficulties may not always be clear, and many people experience one or more of the above conditions and live with co-occurring mental illness/psychosocial disability, attention deficit hyperactivity disorder (ADHD), developmental language disorder (DLD) and specific learning disorder (SLD). All these conditions can further complicate diagnosis (Baldry, Clarence et al., 2013).

Another group of people with disability who may be more likely to come into contact with criminal justice systems are people with psychosocial disability. The term *psychosocial disability* is used to describe the disabling barriers that may arise for a person with severe and persistent mental illness (Hayes et al., 2018). Severe and persistent mental illness is traditionally associated with conditions such as schizophrenia, schizoaffective disorders, bipolar disorders, and major depression (Killackey et al., 2015). Psychosocial disability arises as a result of the stigma, social exclusion and discrimination towards a person with severe mental illness, and its effects can endure, whether or not a person is experiencing symptoms of their condition (Griffiths et al., 2019).

People with hearing impairment are another group of people with disability who may experience significant challenges within the CJS (Lumsden & Black, 2022). There are a number of descriptors to describe hearing loss, including *Deaf* (with a capitalised D) to describe people who identify as part of the signing Deaf community; *deaf* (with a small d) to describe the physical condition of not hearing in people who do not identify as members of the Deaf community; and *hard of hearing* to describe people who have acquired a hearing loss in late childhood or adulthood, or who have a mild or moderate hearing loss (Aussie Deaf Kids, 2022). This review refers to d/Deaf people as a broad reference to people with different types of hearing loss.

A targeted literature review was undertaken to examine the current knowledge base on the involvement and experiences of the CJS for people with disability. The review focused primarily on sociological and social scientific literature rather than on clinically oriented sources. This literature review reports on recent and relevant Australian and international scholarly literature (n=154) and grey literature (n=24) including reports and submissions from relevant organisations to provide a contextual understanding of the experiences of people with disability who are in contact with the CJS.

2.1 Prevalence of people with disability in contact with the criminal justice system

While the focus of this literature review is on the lived experience of people with disability in contact with the CJS, it is important to note that a great deal of attention has been given to research on the prevalence of people with disability in the CJS (for example, Board et al., 2015; Dias et al., 2013a; Marshall-Tate et al., 2020; Trofimovs et al., 2021). This preoccupation with prevalence research reflects a desire by researchers to measure the level of unmet need in people with disability in contact with the CJS and could be used to determine resource allocation to this group (Krug & McNutt, 2008). Data on the prevalence of people with disability in Australian CJS is varied and capturing data on prevalence of disability is challenging. These challenges are associated with a lack of self-reporting by people with disability and underdiagnosis by the system, especially about mental health conditions, acquired brain injury and FASD (Law Council of Australia, 2018a). Moreover, inconsistencies between organisations and services in identifying and screening people with disability contribute to uneven patterns of identification among data sets (Trofimovs et al., 2021). Respondents to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission (DRC)) (2020) highlighted that there is no nationally consistent data that captures the rates of people with disability in the justice system. Further research in the future is also needed about people with different types of disabilities; differences in prevalence according to cultural background and gender; and prevalence rates in different parts of the CJS.

As a broad indicator of the prevalence of disability in prisons populations, self-reported data from the Australian Institute of Health and Welfare (2019) found that 29% of prison entrants reported a long-term health condition or disability that affected their participation in activities, education, or employment. Human Rights Watch (2018) suggests that people with cognitive or psychosocial disability comprise almost 50% of people entering prison in Australia. The Queensland Productivity Commission compared the characteristics of Queensland prisoners to the general population. They estimated that 32.1% of Queensland prisoners had high or very high psychological distress, compared to 11.9% of the general population; 26.3% of prisoners were taking mental health related medication in contrast to 18.2% of the general population; and 35% of prisoners had a disability which limited activity, employment or education, compared to 18.3% of the general population (Queensland Productivity Commission, 2019). Recent statistics from New South Wales (NSW) indicate that overall rates of offending for people with disability between 2009 and 2018 are between 2.32 and 2.61 times higher than those in the total population of New South Wales (Ringland, Boiteux & Poynton, 2022).

The most recent Australian prevalence study is the study by Trofimovs and others (2021) that used multiple linked administrative data sets to identify the rate of intellectual disability among people in the NSW prison population. Overall, Trofimovs et al. (2021) found that 4.3% of the NSW prison population were identified as having an intellectual disability. In a Queensland study, Dias et al. (2013a) used the Hayes Ability Screening Index (HASI) and an additional screening measure of either attendance at a special school or a self-reported life-time diagnosis of intellectual disability to identify a sample of prisoners within six weeks of release from custody from seven prisons in Queensland. It was found that 9% of study participants were identified as having an intellectual disability. However, the HASI screening tool only indicates the probability of intellectual disability and does not specifically identify or confirm its presence. Dias et al. (2013a) note that in order to diagnose an intellectual disability, full-scale psychometric testing of intelligence and adaptive behaviours is required. The HASI however may broadly identify other types of cognitive impairment, mental illness or those with poor English language skills (Dias et al., 2013a).

In sum, based on available evidence, the rates of people with intellectual disability in prison populations vary between 4.3% to 9%. It is likely that this is an underestimate due to issues with consistently identifying prevalence. This represents a significant over-representation when compared to the rate of intellectual disability in the general population as approximately 2% (Bhandari et al., 2015; Dias et al., 2013a; Trofimovs et al., 2021).

Available data on the prevalence of disability among Aboriginal and/or Torres Strait Islander people identifies that there is an over-representation of First Nations Australians with disability in the CJS (Law Council of Australia, 2018a; Shepherd et al., 2017). However, this is likely to be an underestimate due to the abovementioned issues and a reluctance among Aboriginal and/or Torres Strait Islander people to identify as having a disability and a lack of culturally appropriate screening and assessment tools (Law Council of Australia, 2018a; Shepherd et al., 2017). The most recent Australian study that investigated the prevalence of disability among First Nations Australians in prison, was a study by Shepherd et al. (2017). This study utilised a number of assessment measures to assess cognitive impairment and the presence of mental illness – the Kimberley Indigenous Cognitive Assessment (KICA); the Wechsler Abbreviated Scale of Intelligence (WASI) and the Mini Neuropsychiatric Interview (MINI). With a small sample of adult Koori prisoners in Victorian prisons (n=122; males n=107; females n=15) Shepherd et al. (2017) found that 21.6% of the sample had impaired cognitive functioning. This study also revealed high rates of dual diagnosis (intellectual disability and co-occurring mental disorder). It found that mood disorders, substance abuse and anxiety were the most commonly diagnosed co-occurring disorders (Shepherd et al., 2017). An older study by Quince and Race (2009) in five prison locations in Victoria examined the hearing status of 109 Aboriginal and/or Torres Strait Islander prisoners (male n=96; females n=13) and found that 12% of prisoners had a hearing loss in at least one ear, compared with 5% in an age-matched non-Indigenous adult population. A report released by Queensland Health (Queensland Government, 2012) examining the mental health of prisoners found higher rates of anxiety, depression, psychosis and substance misuse in the Aboriginal and/or Torres Strait Islander population compared to the non-Indigenous adult population. Reports that the DRC (2021) drew upon also estimated higher proportions of First Nations Australians in the CJS with intellectual disability, cognitive impairment or a mental illness, than the general population. However, without reliably collected data in

conjunction with issues regarding the identification of people with disability in the CJS it is difficult to ascertain the true extent of the issue.

This section has highlighted the methodological difficulties in ascertaining the prevalence of people with disability in the CJS. While prevalence studies can measure the level of unmet need for people with disability in contact with the CJS, there are many unknowns about the number of people with disability in the CJS. The next section will explore the characteristics and life circumstances of people with disability which can lead to their involvement in the CJS.

2.2 Characteristics and life circumstances

2.2.1 Social disadvantage

People with disability in contact with the CJS are a significantly disadvantaged group, with high rates of poverty, homelessness, substance abuse, poor health and mental illness that span across their lives (Dias et al., 2013b). Recent findings from the DRC (2020) highlight that, for people with disability, contact with the CJS in Australia is grounded in cumulative disadvantage, as they experience disadvantage across a variety of sources throughout their lives. The factors of disadvantage discussed here have been found to contribute to poor CJS outcomes (ACT Government, 2019). For people with disability, their contact with the CJS is often linked to the disadvantage they experience as a result of disabling attitudes and practices within the broader community. Disability discrimination can lead to people with disability experiencing stigma, marginalisation, lack of available resources, and difficulties accessing services and supports (Crowe, 2020). This disadvantage is even more profound for people with disability who are of Aboriginal and/or Torres Strait Islander descent who live with the daily consequences of colonisation and racial discrimination (Baldry et al., 2015; Corporal, 2017; DRC, 2021).

Many people with disability who are in contact with the CJS have poor physical and mental health and a history of limited access to appropriate medical care (Law Council of Australia, 2020). For example, people who are d/Deaf are likely to have a history of difficulties accessing culturally competent and linguistically fluent service providers to meet their healthcare needs (Crowe, 2020). People with intellectual disability in prison are more likely to have a range of medical conditions in comparison to people without intellectual disability in prison (Dias et al., 2013b).

People with disability in contact with the CJS also have a high occurrence of homelessness or insecure housing and poverty (Baldry et al., 2015; Baldry et al., 2016; Ellem et al., 2020; Ellem et al., 2012; Law Council of Australia, 2020). It is well established that there are links between homelessness and insecure housing, and offending and imprisonment (Baldry et al., 2013; ACT Government, 2019), due to structural issues such as increased police contact due to offences that target people experiencing homelessness (Dowse et al., 2021; Saunders et al., 2014). Moreover, for Aboriginal and/or Torres Strait Islander people with disability, the rates of homelessness are reported as disproportionately higher than for non-Indigenous people (Baldry et al., 2015; Baldry et al., 2016; DRC, 2021).

Substance and alcohol abuse is known to contribute to further disadvantage for people with disability in contact with the CJS (Ellem et al., 2020; Law Council of Australia, 2020). People with an intellectual disability may not abuse alcohol and substances more than other groups in contact with the CJS (Bhandari et al., 2015; Ellem, 2019), however research suggests that they are less likely to understand the impact of their drug use on their offending and have less success in completing substance abuse programs compared to people without intellectual disability (McGillivray et al., 2016). As McGillivray et al. (2016) point out, this suggests that programs available for the treatment of substance abuse issues are seldom accessible or tailored to people with intellectual disability.

People with disability in contact with the CJS are also more likely to have lower levels of education than people without a disability (Baldry, Dowse, et al., 2013; Chaplin et al., 2017; Dias et al., 2013b; Law Council of Australia, 2018a, 2020). In Dias et al.'s (2013b) study, people with intellectual disability in their sample typically had less than 10 years of formal education and Baldry, Dowse, et al. (2013) found that only approximately 20% of the participants in their study of people from NSW with mental health disorders and cognitive disability

in contact with the CJS had finished school with a qualification. This flows on to lower levels of employment and fewer financial resources as adults (Law Council of Australia, 2020).

2.2.2 Criminalisation of disability

The significant levels of disadvantage experienced by people with disability in the CJS can be compounded by a lack of recognition and understanding of the nature of a person's impairment. This is especially true for people with cognitive and psychosocial disability who may experience increased interactions with police as their behaviours are often interpreted as difficult or defiant (Law Council of Australia, 2020). The over-surveillance and involvement of this group within the CJS is often referred to as the 'criminalisation of disability' (Baldry, Dowse, et al., 2013; Law Council of Australia, 2020; McCausland & Baldry, 2017). Respondents of the DRC (2020) highlight that the criminalisation of people with disability occurs when a person with a disability comes into contact with the CJS in circumstances where another system, such as the health system or the disability service system would be better placed to respond. An example of this is where a residential service provider contacts the police rather than engaging with a therapeutic response regarding a person with a disability, resulting in 'challenging' behaviour being criminalised (Baldry, Dowse, et al., 2013).

It can be difficult to determine the degree of influence a person's impairment may have on their behaviour and how this may contribute to involvement with the CJS. This is largely due to the multiple diagnoses that people may have, as well as the complex disadvantage people experience (Baldry, Clarence, et al., 2013; Ellem et al., 2020). Writers have historically looked at certain characteristics of intellectual disability and FASD, such as communication and social skill difficulties; suggestibility and exploitability; delays in moral development; and poor judgement or impulse control as risk factors for CJS involvement (Brown et al., 2014; Clare & Gudjonsson, 1993; Lindsay et al., 2004). Similarly, people with acquired brain injury, depending on the nature and severity of the injury, can experience problems with balance and chronic pain; memory loss; sensory impairments; problems with concentration and problem solving; difficulties in communication; and display agitated, inflexible, and impulsive behaviours (Eriksson et al., 2019). All of these characteristics can make people susceptible to police contact and subsequent criminal justice involvement. Research about people on the autism spectrum cites characteristics which can lead to behaviour that may be deemed criminal offending, such as aggressive or distressed responses to change or unexpected events; a lack of empathy towards victims; and out-of-the-ordinary, disruptive, obsessive or repetitive behaviour (Copenhaver & Tewksbury, 2019; Higham et al., 2021; Vinter et al., 2020). People with mental health disorders associated with schizophrenia, depression and anxiety disorders (American Psychiatric Association, 2022) and who experience psychosocial disability are also considered psychologically vulnerable to CJS involvement (Herrington & Roberts, 2012). People with schizophrenia can experience disordered thoughts, unusual beliefs and delusions; and situationally inappropriate emotions. Negative thoughts, low self-esteem, sadness, lack of motivation and disturbed sleep are symptoms of depression. People with anxiety disorders may struggle with fear and panic in response to specific events. Regardless of diagnostic labels, people experience their disability in heterogeneous ways (Anazi et al., 2017), and disability characteristics only partially explain a person's involvement in the CJS. However, an understanding of the person's disability and its impact on their life is an important consideration in developing appropriate responses within the CJS.

2.2.3 Victim-offender overlap

A number of recent studies have reported that a victim-offender overlap is common for people with disability who come to contact with the CJS (Anstis & Thomas, 2022; Baldry, Clarence, et al., 2013; Baldry et al., 2015; Baldry et al., 2016; Fogden et al., 2016). Baldry, Clarence, et al. (2013) found that people with cognitive disability, especially those with complex support needs, are significantly more likely to have had earlier and more frequent police contact as both victims and offenders due to their increased vulnerability. A NSW study by Baldry, et al. (2015) found higher rates of victimisation and offending for First Nations Australians with disability than for non-Indigenous Australians with disability. Fogden et al. (2016) found that people with an intellectual disability in Victoria who were in contact with the CJS as suspects, offenders, victims, witnesses or a person in need of assistance had higher rates of violent and sexual victimisation than people without an intellectual disability. Furthermore, Fogden et al. (2016) note that people with intellectual disability and comorbid mental illness had an even higher chance of victimisation and offending. In the most recent Australian study, Anstis and Thomas (2021) found that the victim-offender overlap for people with an intellectual disability

in Victoria was characterised by CJS involvement at an early age and, in keeping with other studies, it was identified that people with an intellectual disability were at a higher risk of involvement in violent crime as victim-offenders.

2.2.4 Early and ongoing contact with the criminal justice system

Contact with the CJS often occurs early for people with disability, as both a victim and an offender (Baldry et al., 2015; Law Council of Australia, 2020). Many young people with disability in contact with the CJS have a history of being in out of home care, which is associated with more frequent contact with the CJS and higher rates of homelessness (Baldry, Clarence, et al., 2013; Baldry et al., 2016). Baldry, Clarence, et al.'s (2013) study found the average age of first police contact for people with cognitive disability was 17.7 years, and that having a cognitive disability resulted in contact with police that was on average almost three years earlier than those without a cognitive disability. Baldry, Clarence, et al. (2013, p. 223) comment that early and frequent contact with the CJS "appears to have functioned to lock individuals with cognitive disability, and in particular those with complex cognitive disability, into lifelong enmeshment with the CJS". Aboriginal and/or Torres Strait Islander people with disability are significantly more likely to experience early and frequent contact with the CJS (Baldry et al., 2015).

2.2.5 Types of offences

There can be difficulties in making definitive conclusions about the predominant types of offending among people with disability. Many of these difficulties arise because of methodological challenges in identifying a representative sample of people with disability in contact with the CJS (Chaplin et al., 2017). In addition, the studies which report on types of offences by people often refer to those people who are convicted for the most serious offences (for example, Helverschou et al., 2015; Ray et al., 2019), and there is less information about people with disability who are diverted from the CJS (Cohen & Harvey, 2016). Reporting on a criminal offence also involves making a distinction between the offence and what may also be described by others as "challenging behaviour" (Leonard et al., 2016). Cohen and Harvey (2016) have argued that there is an under-reporting of offences committed by people with disability, as disability workers may be reluctant to press charges against a person to avoid them facing negative consequences. There is also a danger, when describing the offences that people with disability commit, that conclusions feed into negative stereotyping about people with particular impairment types. For example, Gunasekaran and Chaplin (2012) note the biased perception of people on the autism spectrum as engaging in atypical crimes involving unusual preoccupations, interests and routines, and how these negative stereotypes are often perpetuated by the media.

This review found two studies (Fogden et al., 2016; Ray et al., 2019) that have compared the offending histories of people with intellectual disability to their non-disabled counterparts. In the study by Ray et al. (2019), the characteristics of patients with intellectual disability in a large forensic program in Ontario, Canada were compared with a control group of people without intellectual disability. Among the 510 adult patients, 47 people were diagnosed with intellectual disability. The patients with intellectual disability were more likely to have committed a sexual offence, more likely to have a diagnosis of paraphilia, and more likely to commit offences which caused direct physical or psychological harm to care professionals. The authors concluded that the higher rates of sexual offending in the group with intellectual disability could be attributed to less knowledge and experience in forming healthy sexual relationships, as well as poor impulse control. Similarly, paraphilic behaviours in this group were seen to be associated with lower levels of social awareness and self-regulation. The offences against care professionals may indicate this group's frequent involvement in paid formal care.

An Australian study by Fogden et al. (2016) looked at the official records of criminal charges in three contact-level databases, from disability services, public mental health services and police records in Victoria. Police records showed that there were no significant differences in the rates of offending between the sample of people with intellectual disability (224/2600, 8.6%) and the community sample (429/4830, 8.9%). However, the sample of people with intellectual disability were charged with violent offences at a rate 6.5 times greater than those in the community sample for violent crimes, and 18.9 times higher for sexual offences.

Other studies (Leonard et al., 2016; McGuire, 2012) provide an overview of types of offences without making any comparison to non-disabled populations. Research on the Independent Third Persons (ITP) program run by the Office of the Public Advocate (OPA) in Victoria documented the offence types for alleged offenders who

were repeat presenters to the program from 2005 to 2010 (McGuire, 2012). The ITP program supports people with mental illness or cognitive disability (including intellectual disability, acquired brain injury, dementia and autism) by providing an independent advocate in police interviews. In this study, the data from 3311 ITP interviews were analysed. The majority of interviews (40%) concerned offences related to theft and theft-related crimes. Other crimes included property damage, and crimes against persons, including assault, attempted assault, threats to kill, recklessly endangering a life, and abduction. Sexual assault and rape represented 7% of interviews, and a very small number of interviews (0.5%) involved homicide and attempted homicide. A small proportion of interviews related to arson and the possession of weapons; breaches of justice procedures, such as intervention orders and resisting arrest. Public order offences comprised 2.5% of interviews (which included trespassing, disorderly conduct and offensive language).

Another study conducted in the Republic of Ireland involved a postal survey targeting lead clinicians in psychiatry services (Leonard et al., 2016). Data relating to 431 people with intellectual disability was collected. The majority of people had reportedly committed offences against persons (80%), with the most frequent offence type being assault (37.4%), followed by indecent exposure (13.7%).

Other authors have provided anecdotal evidence regarding the types of offences that people with disability commit. Cyber-dependent offending, i.e. criminal behaviour using computing and the online domain; and stalking, has been associated with people on the autism spectrum (Payne et al., 2020; Post et al., 2014). Studies have also examined the relationship between people with traumatic brain injury and violent crime (Colantonio et al., 2014; Lansdell et al., 2022).

While there is a lack of conclusive findings in the literature on the types of offences committed by people with disability, perhaps what may be more important to consider is the social disadvantage this group experiences and the criminalisation of disability that occurs for this group (Queensland Advocacy Incorporated, 2015). Many people with disability can cycle in and out of the CJS on the basis of frequent and repeated low-level offending, because little has been done to address the poor social conditions in which people live and criminal justice professionals fail to understand and respond appropriately (Baldry, Clarence, et al., 2013).

The above section has provided a brief insight into some of the disadvantages faced by people with disability who have contact with the CJS and the subsequent criminalisation of disability. Many people with disability have experiences as both victims and offenders and their contact with the CJS is likely to begin at a young age. These factors create an environment in which it is difficult for people who end up in the CJS to leave the system without adequate systems and supports in the community. Methodological issues can arise in determining the types of offences people with disability commit and accurately comparing this data with non-disabled populations.

2.3 Criminal justice system responses to people with disability

2.3.1 Police

2.3.1.1 Contact with police

Past Australian studies identified that people with disability have a high incidence of police contact as both offenders and victims (Baldry, Dowse, et al., 2013; Baldry et al., 2015; Dowse et al., 2021; Office of the Public Advocate, 2012; Trofimovs & Dowse, 2014). In a study by Baldry, Dowse, et al. (2013) it was found on average, the people in their NSW study cohort had 70 incidents of police contact per person over the duration of ten years and that the presence of any mental health, cognitive disability, intellectual disability or borderline intellectual disability diagnosis increased the number of police contact compared to people without a diagnosis. Police contact often occurs in instances where an alternative system response could be more appropriate, for example where police are called to do a welfare check or to handle issues in residential care settings, which may be better responded to by those providing direct supports to the person with disability (Dowse et al., 2021; Law Council of Australia, 2018a, 2018b). The nature and frequency of police contact is considerably more concerning for First Nations Australians with disability, where research has indicated that this group come into contact with the CJS at an earlier age than their non-Indigenous peers with disability. Baldry, Dowse, et al. (2013) found that First Nations Australians with disability had their first police contact on average at 14.9 years of age, compared to 18.3 years for their non-Indigenous peers. Further, Aboriginal and/or Torres Strait Islander

people with disability had a higher number of contacts with police over the course of their lives than their non-Indigenous peers (Baldry et al., 2015).

People with disability with criminal histories or who are known to police have reported feeling “targeted” by police, noting that they often had contact with police while walking or driving in the community (OPA, 2012). Interactions such as this can lead to people with disability not reporting or underreporting to police, when they are the victims of crimes (Fogden et al., 2016). Furthermore, police may interpret disability-related behaviours as defiance; people with disability may not understand when they are issued with a police caution, or know their legal rights. These factors can lead to further disadvantage in the criminal justice process (Ali et al., 2016; Salerno-Ferraro & Schuller, 2020). As such, it is not only the timing and frequency of police contact that leads to disproportionate CJS contact, but a complex combination of social and individual factors, disadvantages and systems issues that can lead to increased contact with the CJS. Trofimovs and Dowse (2014) argue that it is this interplay of factors which can lead to the development of behaviours, associations and patterns that can increase the intensity of police contact.

In addition to feeling “targeted” by police, people with disability have reported negative experiences after coming into contact with the police due to police misunderstanding of their disability or misinterpretation of their behaviours. For example, research by Holloway et al. (2020) and Salerno-Ferraro and Schuller (2020) found that people on the autism spectrum felt that autism-related behaviours, such as stimming or communication difficulties could be misinterpreted by police as resistance, deceit, guilt or aggression. Wallace et al. (2021) found that people on the autism spectrum and parents and caregivers of this group had a fear of the police for risk of having their behaviour misinterpreted. Race and Hogue (2018) reported that for d/Deaf people in England and Wales, their communication needs were not met, with only 11% of the surveyed participants stating that their experience with the police was ‘good’ (on a scale of extremely poor, poor, somewhat poor, somewhat good, good, extremely good). Some respondents reported poor access to a sign language interpreter.

2.3.1.2 Police knowledge about disability

As police are the first point of contact for the CJS, their knowledge about how to identify people with disability who may need support or would be suited to diversion is important (ACT Government, 2019; Australian Human Rights Commission, 2014; Douglas & Cuskelly, 2012; Dowse et al., 2021; OPA, 2021a). Research conducted both internationally and in Australia has identified that there are gaps in knowledge and issues with how police identify people with disability (ACT Government, 2019; Australian Human Rights Commission (AHRC), 2014; Douglas & Cuskelly, 2012; Eadens et al., 2016; Gulati et al., 2021; Herrington & Roberts, 2012; OPA, 2021a; Railey et al., 2021). For example, a study by Douglas and Cuskelly (2012) which involved focus groups with Queensland police officers found that a majority of the officers were confident that they would be able to identify a person with an intellectual disability by their physical appearance, such as their physiognomy, dress or gait. The police officers also suggested that they would be able to identify a person with an intellectual disability based on the person’s communication, comprehension and behaviour (Douglas & Cuskelly, 2012). These police accounts suggest a false confidence in identifying people with disability, whose impairment may be “hidden” from others. For example, people with impaired capacity may not have a visible presentation, may not have a diagnosis, or might “hide” or not disclose their disability (Baldry et al., 2015; Douglas & Cuskelly, 2012; Eriksson et al., 2019; Law Council of Australia, 2020). Further examples of police failure to identify disability across Australia have been reported by the AHRC (2014) and the Law Council of Australia (2020). Both of these sources also concluded that police have difficulty with distinguishing between intellectual, psychosocial, cognitive disabilities and acquired brain injuries. A scoping study by Railey et al. (2021) about first responder knowledge of people on the autism spectrum identified from the body of research that police had issues with identifying features and characteristics of people on the autism spectrum and felt that they were not equipped to work with this group. Research by Stewart and Glowatski (2014) on police perceptions and knowledge about FASD, in contrast to the previous studies, found that among the Canadian police interviewed for their study (n=34), a majority of the officers did have considerable knowledge about FASD. Despite this, officers indicated that they would like more training and information about the condition as the police officers felt under-equipped to work with this group in the community (Stewart & Glowatski, 2014).

The above discussion suggests that more access to training and the development of knowledge about people with disability is important and required to improve interactions between police and people with disability, and importantly to facilitate access to support and diversionary programs in order to improve outcomes for people with disability who are in contact with the CJS (ACT Government, 2019; AHRC, 2014; Douglas & Cuskelly, 2012; Eadens et al., 2016; Eriksson et al., 2019; Gulati et al., 2021; Herrington & Roberts, 2012; Lansdell et al., 2018b; OPA, 2021a; Railey et al., 2021). While many studies regard police training as imperative, training alone may not affect significant changes in police officers' attitudes toward people with disability (Dowse et al., 2021). Viljoen et al.'s (2017) systematic review of police officer disability sensitivity training found limited evidence of the effectiveness of training programmes. The authors concluded that learning was not a one-time event, and instead required ongoing and repeated exposure to new knowledge. Disability training programmes also need to consider people with different types of disability and involve collaborative teaching approaches which include people with disability and other professionals (Viljoen et al., 2017).

Over-policing in relation to people with disability, as defined by the Law Council of Australia (2020, p. 26) is "a greater likelihood of being stopped and searched, cautioned, charged and/or detained". Over-policing of disadvantaged people, such as people with disability, people experiencing homelessness and Aboriginal and/or Torres Strait Islander people is the result of policing strategies that focus on the enforcement of low-level crimes, such as public nuisance laws, obstructing police, shoplifting and fare evasion (Law Council of Australia, 2018b). In light of these enforcement strategies, the failure of police to identify and appropriately responding to people with disability can contribute to the high number of contacts with police (Baldry et al., 2016). Furthermore, a report for the DRC highlights that a common experience amongst people with disability is the failure of police to provide adequate support to people with disability (Dowse et al., 2021). Under-policing affects victims of crime who may have their claims dismissed or minimised by police, which also has an impact of under-reporting the occurrence of crime against people with disability. Responses to the DRC demonstrate significant challenges for some people with disability in having their cases progress through the system, with police viewing them through a discriminatory lens where the reliability or credibility of their complaints are judged (Dowse et al., 2021).

Overall, evidence suggests that disability awareness training alone is not sufficient to ensure fair and equitable police responses to people with disability in the CJS but rather the provision of appropriate support people (via for example Independent Third Person schemes, and access to qualified interpreters for people who are d/Deaf) is key to assisting people with disability who come into contact with the police to realise their fundamental right for access to justice (Dowse et al., 2021; Zidenberg, 2021). There are some promising reforms in South Australia, where the South Australian Police Division of Mental Health and North Adelaide Local Health Network have undertaken a trial Mental Health Co-Response Program in Adelaide's northern suburbs (<https://chof360.com/sapol-mental-health-co-response-project/>). This program is staffed by an experienced mental health physician who works alongside police officers to respond to calls, provide expert assessment and advice in interactions with people with psychosocial disability. Another approach which could reduce criminal justice involvement for people with disability is the concept of Justice Reinvestment, where funds are disinvested from criminal justice agencies and reinvested into disadvantaged communities to improve education, employment, social and cultural outcomes (Dowse et al., 2021).

2.3.2 Courts

2.3.2.1 Experiences of the courts and legal system

The research literature indicates that people with disability experience several difficulties in their interactions with the courts and legal system. This can include understanding the key legal terminology, processes and systems of the courts; and having trouble comprehending the conditions of court orders and sentencing (Ali et al., 2016; Chaplin et al., 2021; Eriksson et al., 2019; Gormley, 2022; Helverschou et al., 2018; Marinos et al., 2017; Minick, 2020). Gormley (2022) conducted interviews with people with intellectual disability in prisons in the UK and found that some participants did not understand the nature or duration of their prison sentence. People with FASD and acquired brain injury have also been found to have significant challenges in understanding what was being discussed in court, troubles comprehending and following the conditions and requirements imposed on them by the courts and forgetting important court dates due to memory difficulties (Brookbanks et al., 2022; Eriksson et al., 2019). While some people on the autism spectrum could understand

and follow most of their court proceedings, they nevertheless reported their trial experiences as very challenging and stressful, and none felt their case, voice and perspective had been represented well (Helverschou et al., 2018). People who are d/Deaf may experience long delays in court proceedings if there is a lack of qualified interpreters for the courts, and interpreters may lack sufficient knowledge of the CJS (Russell et al., 2018). If a person uses a variation of sign language that interpreters are not familiar with (for example, some Deaf Aboriginal and/or Torres Strait Islander people in areas of FNQ who have their own sign language), this may create further communicative challenges (Aussie Deaf Kids, 2022; Zidenberg, 2021). In addition, some d/Deaf individuals may be linguistically deprived, due to early decisions regarding education and language by parents, teachers and/or doctors, and the person may not be fluent in any language, signed or spoken (Zidenberg, 2021).

When a person's disability is undiagnosed or undisclosed at the time of their trial, they can encounter significant difficulties in understanding court proceedings without assistance from a legal representative who is cognisant of their condition (Eriksson et al., 2019). A further related issue identified by judicial officers and legal professionals interviewed by Marinos et al. (2017), concerns the vulnerability of people with disability when they do not understand the consequences of their decisions, such as their plea, in court. Given the incentives for defendants to plead guilty, interviewees stated that many accused people with disability may be vulnerable to entering a guilty plea without full knowledge or understanding of its consequences (Marinos et al., 2017). Submissions to Australian governmental inquiries support these empirical findings, outlining accounts of people with disability who struggle to comprehend information conveyed by their legal counsel, have difficulties following court dialogues, and plead guilty without understanding what they were saying or what the consequences were (AHRC, 2014). Limited knowledge of the law and their rights during court proceedings are also barriers to justice for people with disability accused of offending (Law Council of Australia, 2020).

Due in part to these difficulties, people with disability can come to experience more adverse court-based outcomes than people without disability (ACT Government, 2019; Ali et al., 2016; Chaplin et al., 2021; Curtis et al., 2015; Marinos et al., 2017; McCarthy et al., 2019; McCarthy et al., 2016; OPA, 2021a). People with disability are more likely to be found unfit to stand trial, are less likely to receive bail, and receive more punitive and restrictive sentences (Chaplin et al., 2021; Marinos et al., 2017; McCarthy et al., 2019; McCarthy et al., 2016). As a result of cycling in-and out of the CJS, people with disability often have a high number of convictions prior to the current offence before the court, and this in turn can lead to harsher sentencing outcomes (Curtis et al., 2015; McCarthy et al., 2019; McCarthy et al., 2016). Offending histories are static and uncomplex pieces of evidence commonly utilised in courts to inform decisions and process large numbers of cases quickly (Baldry et al., 2015). There is also evidence to suggest legal professionals and laypersons perceive offenders with disability as 'more dangerous' or 'higher risk' than offenders without disability (Curtis et al., 2015). Further, a lack of appropriate supports in the community influences sentencing and bail decisions for defendants with disability. There may be an inadequacy of supports provided by the NDIS and courts may consider people being placed in remand as a safer option for the community (ACT Government, 2019; Ali et al., 2016; OPA, 2021b).

2.3.2.2 Responses from the courts and legal system

Stigma and lack of knowledge, awareness and training concerning disability are key structural barriers to people with disability accessing justice within the courts and legal system (Law Council of Australia, 2020). For example, people with disability can behave in ways which can be misinterpreted as being intentionally difficult or insolent, which may contribute to the higher proportion of people with disability being arrested, questioned, and detained for minor public order infringements compared to people without disability (Law Council of Australia, 2020). Interviews with legal professionals highlight the lack of appropriate education and need for mandatory training regarding disability among judicial officers, resulting, it has been suggested, in judicial officers lacking appropriate understanding of the potentially significant role that a disability can play in offending behaviour (Marinos et al., 2017; Slavny-Cross et al., 2022). For example, Helverschou et al. (2018) found these officers had limited understanding of people on the autism spectrum. Similarly, Railey et al. (2021) found that judicial officers held stereotypical beliefs about this group, often regarding people as predisposed to offending behaviour.

A lack of appropriate awareness and understanding of disability within the courts also makes it difficult for legal professionals to identify disability effectively. Early identification of disability is necessary within the CJS in order to provide appropriate supports, services and accommodations. In Australian courts, however, the assessment of disability appears to be inconsistent and insufficient (AHRC, 2014; Baldry et al., 2015; Helverschou et al., 2018; Marinos et al., 2017). Judicial officers and legal professionals often must rely on their personal and unofficial interpretations of how a person communicates, presents themselves and behaves to recognise disability (Marinos et al., 2015). Otherwise, they rely on the provision of information from external sources, such as family or community members, or prior assessment and diagnosis (Marinos et al., 2017).

It was noted in the Queensland Productivity Commission Inquiry into the NDIS Market (2021) that Magistrates Courts could play a role in identifying defendants with disability who could be eligible for NDIS services. The Court Liaison Service (CLS) within these courts can provide clinical assessments of people with disability charged with offences and thereby assist in their diversion from the CJS to appropriate community services. There was a lack of data to indicate how often referrals to the NDIS occurred, and the Public Advocate in its submission to the Inquiry, reported that there was a lack of appropriately qualified staff to undertake the required assessments.

Concerns have also been raised specifically regarding the under-identification of disability among Aboriginal and Torres Strait Islander people in contact with the CJS in regional and remote areas (Baldry et al., 2015). It is suggested this failure to identify disability may be due to the high case-load burden on summary circuit courts and the need to process a significant volume of cases quickly. Cases are often heard back-to-back, leading to routinisation with little scope for flexibility and individual consideration in dealing with matters (Baldry et al., 2015).

Obtaining appropriate and affordable legal representation is difficult for people with disability due to the limited availability of affordable legal assistance services that have both the capacity and capability to represent and respond to clients with complex support needs (Law Council of Australia, 2020; Slavny-Cross et al., 2022). Severe resource constraints among legal services can delay the representation of people with disability, add incentive for defendants to plead guilty and impact the accessibility of non-custodial sentencing options or diversion (Baldry et al., 2015; Law Council of Australia, 2020; Slavny-Cross et al., 2022). In particular, these constraints have been reported to have negative outcomes for First Nations Australians with disability (Gatwiri et al., 2021; Slavny-Cross et al., 2022). Due to the limited resources and capacity of legal assistance services, the number of people with disability self-representing also appears to be increasing (Law Council of Australia, 2020). This can pose difficulties for people with disability who may experience communication challenges, and lack legal knowledge and skills. It can result in poorer court outcomes, particularly for those exercising their right to plead not guilty (Law Council of Australia, 2020; McDonald et al., 2017). People with disability may lose the opportunity for diversion from courts or incarceration, receiving custodial sentences for lower-level offences and missing out on special accommodations for their disability (McDonald et al., 2017).

A prominent theme in the current literature relates to the fitness of people with disability to plead and stand trial. A person accused of a crime may be considered unfit if they cannot understand the charges, proceedings or evidence, or if they are unable to instruct their legal counsel. Intellectual disability has been found to be common among forensic patients found unfit to stand trial and who have received a qualified finding of guilt (Wu et al., 2021). However, while consideration of fitness may be intended to protect people with disability, findings of unfitness in Australia may infringe upon a defendant's right to a fair trial, equal recognition before the law and can result in indefinite detention. It has been argued that accused people with disability should rather be supported by the courts to exercise legal capacity on an equal basis with others (Gooding et al., 2017; McSherry et al., 2017). Further, Australian legislation governing fitness to plead and stand trial has been found to be inconsistent, ambiguous, and spread across multiple statutes. This legislation can conflate cognitive disability with mental illness, ignoring that each condition has different support needs (AHRC, 2014). Traditional legal mechanisms of punishment may also be ineffective and unreasonable when applied to people with disability who come to offend. For example, Brookbanks et al. (2022) have raised questions about the appropriateness of legal systems grounded in such principles for people with FASD (Brookbanks et al., 2022).

People with disability who are found unfit to stand trial may also be detained for an undetermined period in prison or another secure custodial setting. Indefinite detention can result in severe and harmful outcomes for people with disability found unfit to plead and stand trial. It can lead to periods of incarceration which exceed the length and severity of a potential sentence had they simply been convicted and sentenced (Gooding et al., 2017; McSherry et al., 2017).

Aboriginal and/or Torres Strait Islander people with disability face particular disadvantage when found unfit to stand trial (Baldry et al., 2015; Gooding et al., 2017; McSherry et al., 2017; Wu et al., 2021). Aboriginal and Torres Strait Islander people have been found to be overrepresented among forensic patients found unfit to stand trial (Wu et al., 2021). First Nations Australians with disability are also detained for longer periods due to the experience of complex and intersecting disadvantages resulting in difficulties obtaining appropriate support or housing that meets their needs (DRC, 2021). In some cases, indefinite detention for this group has

resulted in inhumane treatment and death. One example, Mr Malcolm Noble, an Aboriginal man with a cognitive disability, was detained for over six years in a maximum-security prison in the Northern Territory. Mr Morton was repeatedly subjected to a restraint chair, the injection of sedatives, and 'being so distressed that he banged his head until it bled' (Baldry, 2018, p. 63).

'Diversion' is a process in which the CJS seeks to divert people who may be vulnerable or marginalised away from the formal courts to specialist courts or community support services as early as possible to attempt to address the compounding and complex disadvantage leading them into contact with the CJS (Gulati et al., 2020; Leonard et al., 2016). Options for diversion available to Australian courts include alcohol and other drug services, out-of-court disposal for low-level offending, support to facilitate access to bail and social and health services, and – for people convicted of offending – probation, parole and community-based treatment orders as alternatives to custodial sentences (Davidson et al., 2017). However, the available literature identifies limitations with the implementation of diversionary programmes. These include difficulties identifying a person's disability, a lack of awareness and training among legal professionals about disability, inconsistencies in the use of diversionary options for people with disability, difficulties sharing information between many organisations with differing agendas, and the limited availability of well-structured community infrastructure which has the capacity and expertise to provide appropriate support to people with disability (Ali et al., 2016; Chadwick & Wesson, 2020; Chaplin et al., 2021; Eriksson et al., 2019; Gulati et al., 2020; Lansdell et al., 2018b; Law Council of Australia, 2020). There is also an under-use of diversion services, particularly for First Nation Australians with disability (Baldry et al., 2015; Steele et al., 2013). Only 142 of the 676 First Nations Australians with disability in the study cohort of Baldry et al. (2015) were diverted from the CJS, with Aboriginal and/or Torres Strait Islander community members and service providers reporting this may be due to the large volume of matters that magistrates, Aboriginal Legal Service solicitors and Legal Aid lawyers deal with in local courts.

Research has found that appropriate and effective support for people with disability in contact with the CJS to protect their human and legal rights, and ensure their equitable participation in court processes, can be unavailable or inadequate, and that courts can fail to accommodate or provide appropriate support for people with disability (ACT Government, 2019; AHRC, 2014; Marinos et al., 2017; McCarthy et al., 2022). Nevertheless, Marinos et al. (2017) heard judicial officers describe some of the supports they make available to people with disability in Ontario, Canada. When they have no legal representation or refuse counsel, a judge often appoints duty counsel, an advocate or friend of the court to attempt to ensure the person with disability is represented. However, this relies upon a number of structural factors such as the effective identification and assessment of the person's disability and the appropriateness of legal representation (AHRC, 2014; Baldry et al., 2015; Helverschou et al., 2018; Law Council of Australia, 2020; Marinos et al., 2017; Slavny-Cross et al., 2022).

2.3.3 Prison

Many of the difficulties for people with disability in the court system are repeated within correctional systems. In the 2022-2023 Queensland State Budget, the Queensland Government increased funding of \$2.9 million for psychological and disability services resourcing for Queensland Corrective Services (https://budget.qld.gov.au/files/Budget_2022-23_BP4_Budget_Measures.pdf). This is in formal recognition of

the need to ensure continuity of core frontline services, as well a growing awareness of the vulnerabilities of people with disability in corrective service facilities. However, it is important to note that this additional funding is non-recurrent, and therefore is not a sustainable strategy to improve the outcomes of people with disability in these settings.

2.3.3.1 Individual factors impacting on experiences in prison

There is a body of thought within prison research, called importation theory which links prisoners' adjustment to prison life to the prisoners' social background and experiences prior to prison. The personal characteristics of prisoners have been seen as instrumental in shaping their experience inside (Lahm, 2016). In applying this theory to people with disability, the literature reports that this group has very few personal resources upon entering the prison system, and therefore are multiply disadvantaged with the prison setting (Rowe et al., 2020). Several Australian and international studies have examined the backgrounds of prisoners with disability using cross-sectional survey data. A study of seven prisons in Queensland between 2008 and 2010 which involved face-to-face administration of a questionnaire and screening of potential intellectual disability among prisoners, found that those prisoners with intellectual disability (n=115) were more likely than their peers without intellectual disability to be male, to identify as Indigenous Australian, and to report low educational achievement (Bhandari et al., 2015). The health status of male and female prisoners with intellectual disability was more likely than their non-disabled peers to include psychiatric comorbidity and poor physical health (Dias et al., 2013a). Shepherd and others (2017) similarly found that almost nine out of 10 cognitively impaired prisoners from Victorian prisons presented with a lifetime mental disorder, indicating that many prisoners with disability have a history of complex social disadvantage arising from poor educational opportunity, cultural background and poor physical and mental health. Similarly, a survey of the mental health of adult prisoners who self-identified as First Nation Australians found that the 12-month prevalence of mental disorder was 72.8% among men and 86.1% among women (Heffernan, 2016). Trauma experience was common and Post-Traumatic Stress Disorder (PTSD) was the most commonly diagnosed mental illness (males 12.1%, females 32.3%). Those with PTSD were more likely to report previous experiences of sexual assault in childhood or early adolescence (Heffernan, 2016). A study of prisoners in a London Category C prison by Chaplin and others (2017) found that prisoners with neuro-developmental disability were more likely than other prisoners to be single, homeless or unemployed before coming into prison and were more likely to have mental health problems. The group of prisoners with disability were more likely to have thought about self-harm and suicide in the last month than other prisoners, and had significantly higher rates of concurrent mental disorders, which included anxiety, depression, psychosis, personality disorders and substance dependency disorders (McCarthy et al., 2019).

Some studies have focused on the adjustment experiences of prisoners with certain disability types. There is growing research interest in prisoners with traumatic and acquired brain injury (for example, Horn & Lutz, 2016; Ramos et al., 2018). Several authors refer to prisoners with brain injury having higher rates of rule infractions while in custody, which has been partly attributed to behavioural challenges associated with the condition (e.g. impulsiveness, inattention, reduced emotional awareness) and exacerbated by the strict and inflexible environment of the prison (Horn & Lutz, 2016; Linden et al., 2021). Similarly, some authors have noted that prisoners on the autism spectrum may have difficulty inside prison with sensory over- or under-stimulation, have social communication challenges and experience stress with changes in routine, which can result in poor prison adjustment (Gulati et al., 2018; Newman et al., 2019). Prisoners on the autism spectrum may react to these stressors in ways that prison officials regard as disruptive and challenging (Lewis et al., 2016). Prisoners who are d/Deaf may struggle to integrate and survive in prison settings, as sound holds an important place within these environments. Communication between correctional officers and prisoners, between prisoners, and via announcements rely on hearing, and entertainment within prison environments is sound-driven, such as listening to music and watching television (Rice, 2016). Regardless of the type of disability, adjustment to the prison setting is likely to be challenging, and a person's behaviours may be misunderstood by others around them. This may be due to the lack of outward signs or indicators of the disability and a failure of others to connect a person's reactions to their disability needs (Linden et al., 2021).

Prisoners with cognitive/psychosocial disability may be vulnerable to abuse, violence and exploitation by other prisoners and prison staff (Eriksson et al., 2019). Victimisation can involve bullying, physical assault, and/or

emotional, financial and sexual exploitation (Ellem, 2012; Gulati et al., 2020). A person with disability may fail to understand both the formal institutional rules and the informal social rules governing prison life, and these misunderstandings may lead to prison staff and other prisoners taking advantage of the person (Minick, 2020). In addition, a prisoner with disability may not know how to make a complaint, or how to request healthcare while in prison (Gormley, 2022).

Many people with disability who enter prison systems have a history of trauma arising from years of social disadvantage and discrimination. Unresolved grief and loss issues, particularly for First Nations people with disability, can be exacerbated within the prison setting. The detention of First Nation Australian women can re-traumatise women with a history of abuse and exacerbate the intergenerational trauma experienced by First Nation Australian mothers with disability (DRC, 2020). Custodial environments seldom provide the support necessary for the safe articulation and resolution of complex personal issues and can lead to further instability and social and emotional damage (Halsey & De Vel-Palumbo, 2020).

2.3.3.2 Service and structural factors impacting on experiences in prison

Adjustment to prison life is not solely dependent upon the personal resources or characteristics of individual prisoners. There are many challenging aspects of imprisonment. These include a prison culture that is characterised by mistrust and distinct hierarchies of power and control; a regimented environment which affords little privacy; a forced association with others who have anti-social tendencies; and extended periods of empty activity and social isolation (Robertson & McGillivray, 2015). These factors can have a detrimental effect on any prisoner but may be especially harmful to people with disability. Often referred to as the 'pains of imprisonment' (Sykes, 1958), there is much in the operations and lack of appropriate supports within prison systems which can impact prisoners with disability.

Much has been written about the failure to identify cognitive/psychosocial disability within the CJS, and this criticism has also been directed at prison systems (Board et al., 2015). The Queensland Productivity Commission (QPC) inquiry into the NDIS market (2021) noted that at the time of the inquiry, the onus on identifying NDIS participants in QCS facilities was on the individual. Furthermore, while it was acknowledged that there were projects that have identified people with disability in QCS facilities, the inquiry suggested that more could be done to identify disability in custodial settings (QPC, 2021). While there have been many studies which have trialled screening tools for prisoners with intellectual disability, there is a lack of consensus on which tools are best employed within the prison setting (Marshall-Tate et al., 2020). The literature suggests that this is due to a variety of reasons, such as the prison environment being non-conductive to testing and a lack of skilled clinicians to undertake assessments (Marshall-Tate et al., 2020; McKinnon & Finch, 2018). In addition, assessment methods may not be culturally appropriate for Aboriginal and/or Torres Strait Islander prisoners (DRC, 2021). An inherent problem identified within research that focuses on the accuracy of screening tools, is that these studies overlook how prison systems respond to information about a person's disability and whether the identification of disability leads to better outcomes for such prisoners. Therefore, there is a lack of evidence regarding the impact that identification of disability has on people with disability in correctional settings. The QPC (2021) inquiry into the NDIS market in Queensland has suggested that screening prisoners for disability could potentially increase access to NDIS supports.

A review into Queensland's parole system identified that assessment and screening of a person's mental health needs are undertaken through a referral process rather than when an individual enters prison (Sofronoff, 2016). The review highlighted that there were long wait times and limited access to transitional services and limited services for First Nation Australian prisoners, as a result some prisoners are released prior to being assessed for mental health treatment.

Anecdotal evidence from the Victorian OPA has shown that people with disability are often detained in correctional facilities for a length of time that is disproportionate to the gravity of their offence (DRC, 2020). Early release and parole are often not possible for prisoners with cognitive/psychosocial disability if they are unable to access prison programs which cater to their learning needs (Chaplin et al., 2017). Similarly, prisoners with disability may be more likely to reoffend and cycle in and out of prison, if the system and the broader community fail to provide appropriate supports to reduce reoffending (Robertson & McGillivray, 2015).

Seclusion and segregation are common strategies employed in correctional facilities to protect vulnerable prisoners and to manage behaviour that is considered disruptive to the operations of the prison (Gulati et al., 2018). The restrictions on daily activities and the reduced opportunity to develop independent and adaptive life skills in segregated units within a prison can have adverse consequences for prisoners with disability. These custodial arrangements also lead to exclusion from rehabilitation and employment programs within the prison, and therefore make it difficult for people to meet the requirements for parole (Robertson & McGillivray, 2015). Segregation in prison can also involve long periods of time without social contact. Interaction with prison officers may be infrequent and occur through a screen or door, or be restricted to security measures such as strip-searching and restricting access to everyday household items (Laws, 2022). Prolonged stays in segregated settings are likely to be anti-therapeutic and lead to a deterioration in a prisoner's mental health (Giblin et al., 2012). In a hearing for the DRC (2020), Human Rights Watch expressed concerns about the overuse of solitary confinement for First Nations Australians with disability within prisons, and how this increased the risk of self-harm and deaths in custody.

2.3.4 Transition to community and community-based correctional orders

2.3.4.1 Re-entry challenges for people with disability leaving prison

The transition from prison to community can be fraught with difficulties for any ex-prisoner but can be especially problematic for people with cognitive/psychosocial disability. Life in prison may foster institutionalisation, and some groups of people, such as people on the autism spectrum, may become dependent upon the predictability and structure of the prison routine and find the return to community living anxiety-provoking (Robertson & McGillivray, 2015). In addition, many people with disability are excluded from rehabilitation and employment programs within prison settings, as they are not considered cognitively competent to utilise these supports, which can leave them ill-prepared for community re-entry (Ellem, 2012). In Australia, if a person serves a sentence less than 6 months, they are often ineligible for throughcare planning by corrective services systems (Tubex et al., 2021). Prison release can be accompanied by increased risk of homelessness for people with disability (Eriksson et al., 2019), increased risk of drug-related harm and other health-related risk behaviours (Bhandari et al., 2015). People with disability are likely to return to the social conditions which led to their incarceration, including social isolation, the influence of others who engage in criminal activity, and to communities which are marked by poverty and social disadvantage (Baloch & Jennings, 2018; Chiu et al., 2020). There may be very little to occupy a person's time within the community, increasing the risk of re-offending (Murphy et al., 2017).

People with cognitive/psychosocial disability leaving prison require supports to maintain healthy lifestyles; to navigate complex health systems; and to understand and adhere to medical advice (Young et al., 2016). A Queensland study examined the health status of a large sample of 1279 prisoners within six weeks from release of custody and found that those who were identified with intellectual disability ($n = 115$, 9%), were more likely than their peers to be diagnosed with medical conditions such as obesity, heart disease and hearing problems (Dias et al., 2013b). Participants were screened for the possible presence of intellectual disability using the HASI, and were administered with a questionnaire seeking information on their general health, mental health and health risk behaviours. This study also identified that half of the prisoners with intellectual disability experienced a co-occurring mental disorder and 13.5% reported very high levels of psychological distress (Dias et al., 2013a). The Queensland Parole System Review Final Report (2016) revealed that there were long waiting lists for the Prison Mental Health Service, and that some prisoners were released from custody before being assessed for mental health treatment.

Other factors for ex-prisoners with disability which can lead to poor post-release well-being are issues associated with untreated problematic substance use (Bhandari et al., 2015). Ex-prisoners who engage in substance abuse are likely to face significant health issues, which can include the risk of infectious disease transmission through sharing unclean injecting equipment, an increase in cognitive decline, poor impulse control, physical impairment, loss of self-care skills and decreased self-regulation (Bhandari et al., 2015; Robertson et al., 2020). If a person has co-occurring mental illness and problematic substance use and takes psychotropic medications, the negative effects of substance use can lead to suicidal thoughts and ideation

(Robertson et al., 2020). An association has been made between alcohol abuse and offending by Lindsay and others (2013) in a sample of 477 people with intellectual disability who were referred to forensic intellectual disability services. This suggests that support to address substance use problems may greatly assist reducing recidivism rates. Problematic alcohol and drug use can also be a contributing factor to people with cognitive disability becoming exposed to high-risk environments and post-traumatic stress disorder (Luteijn et al., 2020).

People with disability leaving prison may also experience difficulties accessing disability supports. Disability specific services may exclude people with a criminal history if the person is considered a danger to other service users with a disability (Gausel & Thørrisen, 2014), and/or if the person's disability is not considered severe enough, in the case of people with mild or borderline intellectual disability (Young et al., 2016). In the Australian context, the National Disability Insurance Agency (NDIA), the key funding body which oversees for disability supports in Australia, created a Complex Support Needs Pathway in 2018 for people with permanent and significant disability who require specialised support, including people who have experienced incarceration (NDIA, 2018). The pathway was designed to provide a continuity of service provision to people with disability leaving prison, but there have been several concerns about its implementation. In its submission to the Queensland Productivity Commission Inquiry into the NDIS Market in Queensland, the Australian Community Support Organisation (ACSO) (2020) reported protracted processes in conducting disability assessments and determining eligibility for NDIS services for people with disability in contact with the CJS, delayed funding approval for this group, and lack of appropriate expertise in NDIS staff in determining resources and supports appropriate for people with disability with these experiences.

2.3.4.2 Supports needed to assist successful re-entry

Preparation for release into the community should ideally start as soon as a person with disability enters prison. Unfortunately, throughcare services in Australia for prisoners as a whole operate in a scattered and fragmented way and lack cultural specificity to Aboriginal and Torres Strait Islander people and people with disability (Ellem, 2012; Tubex et al., 2021). The support needed for successful reintegration into the community for people with disability needs to move beyond a single, focused response to one aspect of a person's life and to address the whole spectrum of community living (Ellem et al., 2020). Young and others (2016) interviewed practitioners and professionals who supported people with cognitive disability leaving prison and found that early planning and continuity of care were considered crucial elements in supporting re-entry. A community case manager could be involved before release from prison, to work collaboratively with the person to determine where they should live, to assist in working out meaningful activities during the day, and to ensure health needs and other supports are met (Murphy et al., 2017). Support needs might involve the development of everyday life skills such as personal hygiene, cooking, eating healthy meals (Young et al., 2016); assistance in accessing social security payments (Ellem et al., 2020); and building community connections with family and relevant community services (Murphy et al., 2017). Partnerships between corrective services facilities and community agencies, such as community-based employment and education providers could also greatly assist a smooth transition from prison to community living and promote effective rehabilitation for people with disability (Dowse et al., 2017).

Criminogenic programs offered in prison and within the community to address offending are seldom designed for, or directly offered to people with disability within the Australian context (Ellem, 2012). Many of the forensic interventions for people with intellectual disability have been designed and evaluated in the UK and are adaptations of mainstream forensic work (Jones & Chaplin, 2020; Taylor, 2021). The evidence base for the effectiveness of these programs is only emerging and is marred by methodological challenges, such as the small number of participants who access these interventions; the absence of comparison groups and randomised control trials; and discrepancies in the length of follow-up period after programs are delivered (Jones & Chaplin, 2020; Vereenoghe & Langdon, 2013). Programs which utilise adapted psychological therapies such as cognitive behavioural therapy; dialectical behavioural therapy; mindfulness and trauma-informed approaches have promise (Browne & Smith, 2018; Jones & Chaplin, 2020; Taylor, 2021). Programs which also consider the learning characteristics of people with disability, assist in developing and maintaining motivation, and provide structured, concrete, goal-oriented approaches over an extended period of time can be beneficial (McGillivray & Newton, 2016). The key to any program is to offer this support as part of a holistic

approach to addressing the social disadvantage in a person's life, and to ensure that learning within prison can be transferred to the community setting (McGillivray & Newton, 2016; Taylor, 2021).

2.3.4.3 Parole and probation

People with disability who are subject to community corrections orders such as probation or parole may have difficulties adhering to the conditions of such orders without appropriate support. For example, service providers in a Victorian study of people with an acquired brain injury, reported that this group often had difficulties understanding the nuances of such orders (Lansdell et al., 2018b). People with an acquired brain injury reportedly had difficulties complying with special restrictions on alcohol intake or contacting a particular individual, which ordinarily would be considered legal activities. People with intellectual disability have also been reported to have difficulty attending required appointments with a probation and parole office, which may be related to challenges in catching public transport, telling the time and keeping away from negative peer influences (Ellem, 2012). Spivakovsky (2013) described the special conditions in community-based orders as confusing to people with disability, likely leading to re-imprisonment for this group due to breaches.

Similar issues regarding lack of identification of a person's disability are reported within parole and probation services (Linden et al., 2021). In their study of people with traumatic brain injury in community corrections in the United States, Gorgens and others (2021) argued that assessment of cognitive and psychosocial vulnerabilities (e.g. mental illness, problematic substance use, and previous exposure to violence) should be prioritised for persons with traumatic brain injury, so that any trauma history and other comorbidities could be identified. With such information a more individualised response could be developed which could include basic modifications to standard probation or parole meetings. This might involve repetition of key points in communication, greater scaffolding of skill-building, the use of assistive technology such as electronic reminders to keep appointments and the scheduling of briefer and more frequent appointments.

The mandated supervision obligations of probation and parole officers may seem in direct contradiction to the support needs of people with disability on community-based orders (Young et al., 2016). A qualitative study in the UK found that ex-prisoners with intellectual disability largely saw probation and parole officers as focused on managing criminogenic risk, rather than recognising the men's aspirations to live in the community (Chiu et al., 2020). Unrealistic expectations of the probation and parole officer role by people with disability may also occur when people have been excluded from community services, and see connection with the probation officer as a substitute for social contact (Hollomotz & Talbot, 2021). Parole and probation officers may also have difficulty connecting people with disability to external community supports who turn away people with so-called mild cognitive disabilities (Murphy et al., 2017).

This section has broadly explored the range of experiences of people with disability in the CJS. It highlighted that in each arm of the CJS, people with disability experience difficulty in navigating the system, having their needs identified and receiving appropriate supports. Much of the research is derived from the accounts of CJS professionals, who have expressed concerns about supporting people with disability within the CJS (for example, Douglas & Cuskelly, 2012; Eadens et al. 2016; Sofronoff, 2016). There are significant gaps in knowledge about people with disability held by CJS professionals, and there is a lack of certainty about the appropriateness and responsiveness of criminal justice intervention within the lives of people with disability. The next section considers what is known about how each arm of the CJS interacts with each other in their responses to people with disability.

2.3.5 Information sharing and interagency responses

Through an exploration of the available literature on the experiences of people with disability who are in contact with the CJS, this literature review has established that each arm of the CJS may identify people with disability and collect information on them, however there are reported issues with the quality and consistency of collection of information, the identification of disability; and with the coordination of supports (Ellem et al., 2012; Lansdell et al., 2018a; Trofimovs et al., 2021). This review was able to identify one initiative by the Queensland Police Service, aptly described as "police referrals". This system involves police connecting at risk and vulnerable community members to external support service providers ([Police referrals | QPS](#)). Previously referred to as SupportLink, this referral system has the potential to improve interagency collaboration (Dowse

et al., 2021). This is important given the current context of disability service provision, where services to people with disability are increasingly marketized and continually changing under the NDIS (Spivakovsky, 2021).

Participants in a study by Lansdell et al. (2018b) about systemic issues faced by people with an acquired brain injury in Victoria, highlighted that there were difficulties with information sharing between service providers, courts and correctional services. Lansdell et al. (2018b) identified a lack of medical information and assessment information being shared between courts, police, corrections and forensic mental health services. Barriers to information sharing related to concerns around client confidentiality and consent, and the strength of informal relationships between staff of the different agencies. As noted earlier (see section 3), the QPC (2021) inquiry in the NDIS market in Queensland found that identification of NDIS participation among people entering prison relied on self-identification by the NDIS participant. Thus, indicating a disconnect of information between the NDIS and QCS. However, the issue of failing to identify people with disability is not restricted to information sharing between organisations. For example, Newman et al. (2019) found that there was an issue with recording diagnosis information in an electronic database between health staff and corrections staff. Overall, the lack of knowledge about the ways criminal justice agencies share data points to a need for further research.

To date, little research has focused on *how* information about people with disability has been shared between criminal justice agencies. However, research has identified that there is often a lack of information being shared between criminal justice, health and community service organisations (Baldry, Clarence, et al., 2013; Lansdell et al., 2018b; Newman et al., 2019; Trofimovs et al., 2021). For example Baldry, Clarence, et al. (2013) and Trofimovs et al. (2021) used linked administrative datasets to explore the identification and outcomes of people with disability in the CJS. Baldry, Clarence, et al. (2013) used longitudinal data from NSW criminal justice and human service agencies and were met with difficulties in linking, merging and analysing the data, thereby identifying that there is a lack of coordination and protocol between the agencies for data sharing. Similarly, Trofimovs et al. (2021) used administrative data across disability, health and corrections data sets from NSW, finding that there were differences in how intellectual disability was identified among the agencies and that a large portion of the identification of intellectual disability occurred while the individual was in custody. Identification late in the criminal justice process represents a missed opportunity to better serve the individual and promote better outcomes in the community with an appropriate diversion (Ellem et al., 2012; Lansdell et al., 2018b). The Australian Government and state and territory governments are working together to develop a National Disability Data Asset (NDDA) to connect information regarding people with disability between government agencies and services ([The National Disability Data Asset - National Disability Data Asset \(dss.gov.au\)](https://dss.gov.au)). A noted barrier to the implementation of information sharing between agencies, is the potential concern for an individual's right to privacy and ability to exercise control over how their personal information is shared (QPC, 2021).

2.4 Summary

This review has drawn upon peer-reviewed scholarly literature and recent grey literature concerning the experiences of people with disability in contact with the CJS. In the process of searching academic literature from Australia and internationally, a burgeoning number of studies were discovered which addressed the topic from a medical or clinical standpoint. These studies focused on the clinical attributes of certain impairment types; considered how these factors influenced a person with disability to commit a crime; and often involved evaluation of clinical trials of programs to address criminogenic needs (for example, Lofthouse et al., 2020; McCarthy et al., 2016). While there may be merit in considering these topics, these types of studies fail to provide insight into the social, economic and political circumstances which lead to people with disability becoming enmeshed in the CJS. It is this sociological focus that has informed most of this review, including an examination of the ways in which various aspects of the CJS respond or fail to respond to people with disability. This aligns with a critical disability studies focus, which draws attention to the political, cultural and sociological character of disability, as well as processes of exclusion related to other identities (Goodley et al., 2019).

Many of the issues raised by stakeholders and researchers in this review are of a longstanding nature and have been reported on for many decades. For example, Hayes and Craddock (1992) reported on the discrimination and disadvantage experienced by people with intellectual disability in criminal law and procedure

in NSW, highlighting similar concerns to the more contemporary sources of evidence. The continuing concern around recognition and support of people with disability within police interactions, the courts, and correctional systems speaks to both the lack of priority given to these issues by governments, but also the complexity of the problems.

Where recent literature departs from earlier studies is in its clearer understanding of the complexity of disability. There is growing interest in considering how people with different disability types fare within the CJS, with a significant number of studies exploring the experiences of people on the autism spectrum (for example, Helverschou et al., 2018), and people with acquired brain injury (for example, Lansdell et al., 2018a). There is also growing recognition of how many people with disability in contact with the CJS have multiple diagnoses, and the effects of disability intersect with many other social identities such as those related to cultural background, employment status, wealth, gender and sexuality (Baldry, Clarence, et al., 2013; Ellem et al., 2020).

People with disability who are in contact with the CJS as both victims and offenders are a significantly disadvantaged group (Dias et al., 2013b). Through engaging with the current available evidence from Australia and internationally this literature review demonstrates that, throughout each arm of the CJS, the social and systemic disadvantage experienced by people with disability and especially First Nation Australians with disability, serves to lead people with disability down a path of continual enmeshment with the CJS. As Human Rights Watch (2018, p. 2) stated, a lack of access to support services put First Nation Australians with disability "on a path where they are more likely to be incarcerated than get a university degree". Reports and submissions reviewed indicate that for people with disability in Australia, contact with the CJS occurs earlier than for people without disability and this contact continues throughout their lifetimes (Baldry et al., 2015; Law Council of Australia, 2018a; DRC, 2020).

The relationship between disadvantage and criminal justice involvement is well established. High rates of poverty, homelessness, substance abuse, poor physical health and mental illness, high rates of unemployment and low rates of education are significant drivers for disadvantage among this group (Baldry et al., 2015; Baldry et al., 2016; Dias et al., 2013b; Ellem, 2012; Law Council of Australia, 2020; DRC, 2020). Furthermore, the lack of recognition and understanding of the nature of a person's impairment by criminal justice professionals contributes to the criminalisation of disability. The literature reveals that this is often a result of the increasing use of police to respond to mental health and behavioural crises, interpretations of behaviour as difficult or defiant and a failure of criminal justice authorities to identify disability and provide suitable support (Dowse et al., 2021; DRC, 2020). Furthermore, the consequences of colonisation and racial discrimination further compound the disadvantage faced by First Nations Australians with disability (Baldry et al., 2015; Corporal, 2017; DRC, 2021).

While there are methodological and ethical challenges, and a general lack of available evidence on the types of offences that people with disability commit, the available literature indicates that people with disability are generally associated with violent, sexual and theft-related crimes (Fogden et al., 2016; Leonard et al., 2016). However, it is the frequently charged low-level offences that cause many people with disability to cycle in and out of the CJS. High incidence of criminal justice contact is often a consequence of the lack of action in addressing the poor social conditions experienced by people with disability and the failure of criminal justice professionals to understand and respond appropriately to the needs of people with a disability (Baldry, Clarence, et al., 2013). Furthermore, police strategies that emphasise enforcement of low-level offences and a failure of police in identifying people with disability contribute to the over-policing of people with disability (Baldry et al., 2016; Dowse et al., 2021).

A common theme in the literature is the failure of criminal justice institutions to adequately identify people with disability, although ultimately there is no firm evidence that identification necessarily leads to better outcomes. For example, evidence suggests that police fail to identify people with disability and even when they do identify a person's impairment, they may still fail to make appropriate accommodations (Dowse et al., 2021). The courts likewise fail to adequately provide support to people with disability and consequently put individuals with a disability at a legal disadvantage (Helverschou et al., 2018; Railey et al., 2021). In addition, there are many studies (predominantly within prison settings) which report a lack of consensus on which screening tools are

best employed and a further concern that assessment methods may not be culturally appropriate for First Nations Australians (Marshall-Tate et al., 2020; DRC, 2021). A lack of knowledge on the part of criminal justice authorities about disability is also an identified issue. For example, studies on police knowledge about disability suggest that police have difficulty recognising and distinguishing between different types of disability and may engage with harmful stereotypes about people with disability (AHRC, 2014; Baldry et al., 2015; Douglas & Cuskelly, 2012). Ignorance and negative attitudes toward people with disability can result in people being incorrectly portrayed as dangerous and high-risk offenders, which leads to longer and more restrictive sentences (Curtis et al., 2015).

The failure of criminal justice services and professionals to identify, respond to and support people with disability has a range of consequences that contribute to the disadvantage, discrimination and trauma experienced by people with disability when in contact with the CJS. Multiple aspects of the criminal justice process place people with disability at a disadvantage, people with disability may not understand their legal rights or police caution (Ali et al., 2016; Salerno-Ferraro & Schuller, 2020), they may have trouble comprehending legal processes in court, understanding their sentence or complying with sentence conditions such as the conditions of their probation or parole (Ali et al., 2016; Chaplin et al., 2021; Gormley, 2022; Marinos et al., 2017; Minick, 2020). Furthermore, available programs in prison or post-release may not be accessible or suitable for people with disability (Chaplin et al., 2017; Ellem, 2012). Ultimately, people with disability are entrenched in a system that fails to address their social and systemic disadvantage.

Little research to date has explored the manner in which both individual and aggregate data on people with disability is collected and shared between criminal justice agencies. The limited available knowledge indicates that there has been poor recognition of individuals with disability and poor coordination across all systems (Lansdell et al., 2018a). This is especially problematic within the Australian context, as there have been radical changes to the system of supports for people with disability within Australia with the advent of the NDIS. The market-based, self-directed nature of NDIS support is poorly suited to people with disability who have complex histories of criminal justice involvement (Spivakovsky, 2021). There is a need for appropriate simultaneous, integrated and multiple supports for this group of people (Dowse et al., 2019, p. 5), which includes an integrated and responsive CJS which is connected to supports in the community. There are promising reforms happening within the Queensland CJS which include initiatives related to people with disability, which are a result of the Queensland Productivity Commission Inquiry into Imprisonment and Recidivism (2019). Listing these initiatives is beyond the scope of this review, however, it is important to note that without a coordinated response between stakeholders, the CJS will continue to serve as an ineffective and often harmful pseudo-welfare agency for some of the most marginalised people in our society.

Overall, this review of the literature provides a broad picture of the issues faced by people with disability who are in contact with the CJS. It has considered the experiences of people with different types of disability and has engaged with the limited available knowledge on the experiences of Aboriginal and/or Torres Strait Islander people with disability. Much of the evidence on these topics is derived from practitioners and professionals (for example, Leonard et al., 2016; Marinos et al., 2017), who can provide useful accounts about how services and systems operate. While there is emerging research which seeks the voice of lived experience of people with disability (for example, Gormley, 2022), much more is needed.

3. Approach to engaging stakeholders

This chapter outlines the methodological approach taken to engaging relevant stakeholders, namely people with disability, family members and practitioners/professionals to discuss their experiences and views of the Queensland CJS and how it responds to people with disability. This research is qualitative in nature, and as such, the researchers make no claims about the generalisability of findings. Instead, the study seeks to provide in-depth information about individual experiences and explores the many factors impacting the experiences of people with disability in the CJS.

People with disability and family members of people with disability in this study have provided powerful accounts of lived experience of the CJS, including the nature of interactions with professionals within this system, as well as their perceptions on how well the system operates as a whole. This group of participants were able to comment on the everyday consequences of CJS involvement and had a degree of independence from operational decisions within the system. While this group of stakeholders reveal the human side to the CJS, it is important to note that to share personal stories did not always come easily. Junior, an Aboriginal man with Aspergers Syndrome, explained, "I just usually leave it in the past, behind me, and move forward." Participation in this research for people with disability and family members involved delving into painful memories, considering uncertain futures, and disclosing stigmatising experiences to a researcher who was a relative stranger. Recollections of practices and decisions made by CJS authorities were often emotionally laden. As such, in the process of sharing personal experiences, participants may not have provided all the facts surrounding their involvement with the CJS. The researchers gave participants autonomy to decide what was comfortable to discuss, and this report has also deliberately excluded some details from interviews in order to protect confidentiality. Therefore, what is presented here are only partial accounts of participants' lived experiences.

In contrast to participants with lived experience, participants who were **practitioners and professionals** spoke largely of practice and policy concerns in relation to people with disability and the CJS. There was seldom any one professional who had experience of all sectors in the CJS and who had supported people with all types of disability. Confidentiality was also a concern for many practitioners, professionals and organisations. The types of services participants provided were often few on the ground, and as such, data regarding people's viewpoints could potentially be re-identifiable. The research team therefore have presented findings from this participant group without disclosing individuals' roles and professional associations.

3.1 Data collection

UQ Human Research Ethics Committee provided approval (HE000538) for all interviews, which were conducted by project research personnel, recorded, and transcribed verbatim.

3.1.1 Interviews with people with disability

Individual interviews were conducted with 12 adult participants with disability who had been in contact with the CJS in the past five years as offenders and alleged offenders (see Appendix One for details of sample). Participants were identified through agencies which support this group, including disability support agencies, advocacy organisations, agencies which support people with mental illness, non-government prisoner agencies, and Aboriginal and Torres Strait Islander community services. The majority of participants were male (n=10), and 8 people were First Nations Australians. Most people had more than one type of disability, with all having some form of cognitive and/or psychosocial disability. Ages ranged from 23 to 64 years. Half of the sample resided in metropolitan areas in Queensland; five came from regional areas and one person from a rural area. The majority of experiences shared related to contact with police and involvement in the court system.

The interview guide was designed to allow participants with disability to have a clear choice in what aspects of the CJS they felt comfortable talking about (see Appendix Two for a copy of the interview guide). Interviews with people with disability catered for people's different communication styles and were supplemented with life maps (see Appendix Three for an example from a previous study (Boodle, Ellem & Chenoweth 2014)). For people with cognitive disability, questions were framed in concrete, comprehensible language. Participants

were asked about their personal experiences of the CJS in Queensland. In some instances, participants were interviewed with a support person, either a paid worker or in one example, a parent. The support person could assist by clarifying questions to ask, as well as assisting the participant to feel at ease in the interview. Although the focus of the study was not on the offences people may have committed, there were times when participants wanted to discuss offences at length with the interviewer. The researchers make no assumptions regarding the innocence or otherwise of any participants with respect to criminal accusations, charges, or convictions. The approach taken was to support participants to tell their story without judgement, honouring their perspectives as their understanding of events.

3.1.2 Interviews with family members

Individual interviews were also undertaken with 5 family members of people with disability who had been in contact with the CJS (see Appendix Four for details of sample). The perspectives of family members were incorporated into the study as there were some instances during recruitment of participants when a person with disability was unable to speak for themselves due to complex communicative support needs, or due to the sensitive nature of the research. In one instance, both the family member and person with disability were interviewed on separate occasions. Family members were asked similar questions to participants with disability. They were asked to describe their perceptions and understanding of their family member's experiences with the CJS. Their accounts also included important information about how they advocated on behalf of their family member with a disability. The people with disability who family members referred to in these individual interviews were all male, with ages ranging from 20 to 52 years. Two people with disability were First Nations Australians. As with the interviews with people with disability, the majority of experiences discussed by family members related to contact with the police, legal assistance, and the court system. A similar non-judgemental and supportive approach to interviews as was used with participants with disability was taken with family members to ensure people felt safe to discuss sensitive aspects of their lives.

3.1.3 Interviews with practitioners and professionals

Interviews were conducted with 28 practitioners and professionals who advocate for and/or provide direct support to people with disability who have experienced contact with the CJS in Queensland (see Appendix Five for details of sample). Participants were identified by the research team as leaders in their fields and were approached to participate in a 45–60-minute interview. Semi-structured interviews canvassed the following key areas:

- experiences supporting people with disability in contact with the Queensland CJS
- perspectives on the nature of challenges faced by, and supports provided to, people with disability in the various phases of CJS contact, including in interactions with police, going to court, in the prison system, on re-entry to the community, and on community correction orders
- views on collecting and sharing information within and across criminal justice and support systems.

3.1.4 Working with First Nations Australian communities

The experiences of First Nations Australians with disability involved in the CJS represent some of the most egregious human rights violations in Australia (Gooda 2021). A report on the experiences of people with disability in the CJS would be incomplete without proper engagement with First Nations Australian communities. The work with these communities was led by Lorelle Holland, an Early Career Researcher and Aboriginal woman with spiritual and cultural connections to Mandandanji Country (Roma, Queensland). Lorelle connected with Aboriginal and Torres Strait Islander Elders in Southeast Queensland and in Townsville. Throughout the design of this research, Indigenous ways of knowing, doing and being have been embedded (Parter & Wilson 2021) to ensure all engagement with Elders, First Nations Australians, and their communities have upheld the values of 'integrity, honesty, truthfulness, faithfulness and respect' (Toombs, 2016 p. 8).

Human rights violations against First Nations Australians occur more frequently and with greater severity in Northern Australia, the region with the highest rates of imprisoned Indigenous people (Allison & Cunneen 2018), including those with disability (Human Rights Watch (HRW) 2018). Knowing this to be the case, the research team sought to engage First Nations Australian communities in FNQ. The team engaged Simone

Rowe, a social worker with practice/research experience in the Cairns region and with the population of interest.

In respect of the significant disadvantage First Nations Australian people experience within the country, the researchers have taken care to clearly identify the cultural identity of First Nations Australian participants throughout the findings sections in this report. In most cases, the communities from which people belong are not specifically named to ensure anonymity. The only exception to this is the inclusion of clear references to participants from FNQ. The researchers felt it was important to highlight this context because FNQ, as part of Northern Australia, has several communities ranked amongst the top 40 most disadvantaged statistical local areas (Vinson et al 2015). Many of these most disadvantaged communities are further characterised by a comparative lack of appropriate social support services, especially for First Nations Australians with disability living in remote regions of FNQ (Australian Institute of Health and Welfare (AIHW) 2020).

While it has been very apparent from this study how much needs to change to improve the outcomes of First Nations Australians with disability in the CJS, the research team recognises First Nations Australians as sovereign people, who are capable, strong, and choose self-determination strategies to achieve equity over their own lives in keeping with the United Nations (UN) Declaration on the Rights of Indigenous peoples (Smith, 2021; UN, 2007). This report highlights this strength and capability by including a separate section in the findings on a successful community justice initiative, the Amaroo Aboriginal and Torres Strait Islander Elders Justice Group in FNQ.

Much can be learned when there is a positive two-way relationship between Aboriginal and Torres-Strait Islander and non-Indigenous cultures. The research team is extremely grateful for the assistance of First Nations Australian communities with this project. Elders contributed to this study by providing important cultural guidance to conducting interviews and in providing valuable feedback and advice regarding the findings related to First Nations Australians in this final report.

3.2 Approach to analysis

The findings set out in this report were derived through an iterative process of thematic analysis. This involved initial familiarisation with deidentified transcripts of interviews through repeated reading (Braun & Clarke, 2006). Data was then reduced by summarising the salient points in each interview using inductive coding, as well as incorporating deductive coding using the key interview questions as a guide for organisation. Codes were further subsumed into interpretative themes which were deemed relevant across the entire data set.

Participants who are people with disability and family members have been renamed using pseudonyms, often chosen by participants themselves. Three interviews from people with disability and family members were crafted into case studies, providing an overall picture of the person's CJS experience in a chronological order. By presenting data in this way, the context behind participants' experiences is better understood, and issues related to disability or offending are considered alongside other aspects in the person's life, such as meaningful relationships, a safe place to live and aspirations for the future (Ledger et al., 2022). The remaining accounts in this report have not been organised into a coherent narrative of the person's experience, as this presented a high risk of reidentification. At the time of writing, some participants with disability were still waiting to have their matter heard before the courts, and as such, the research team has sought to avoid potential risks to such processes to ensure the person would not experience adverse outcomes from participation in this research.

Practitioners and professionals in this research work within specialised fields of practice and the research team was aware that this could make the individual or organisation identifiable to the reader. Being identifiable could posed risks which could potentially impact on the person's professional relationship with other agencies in the CJS. In order to preserve anonymity for practitioners and professionals, direct quotes have not been attributed to specific individuals. Instead, quotes are selected to represent typical or shared experiences of practitioners and professionals. Appendix Six lists the organisations participants were recruited from.

4. Findings from participants with lived experience

4.1 Living with disability

4.1.1 Understandings of disability

The majority of participants with disability in this study reported having some form of cognitive and/or psychosocial disability. This included diagnostic labels such as intellectual disability, autism spectrum disorder, schizophrenia, ADHD, borderline personality disorder, and PTSD. For many participants with disability, there was more than one diagnosis, and for some, diagnoses would change over their life course. All participants with disability were given the opportunity to describe their disability in their own words, as it was acknowledged that not all people with CJS experience identify with the diagnostic labels ascribed to them (Wieland & Zitman, 2016). For some, the disability label was more than a descriptor, but a marker of a personal crisis the person had experienced. For example, Bear reported he had PTSD from being raped as a child. Bear stated that he had never received a formal diagnosis, but he felt that the symptoms he struggled with arose directly from the trauma he had experienced. Others regarded their disability label as something only to be used in certain contexts. For many participants, there was a lack of trust in CJS authorities about disclosing their disability. For example, GT, a man with psychosocial disability shared that a person needed to consider whether disclosure of disability to CJS authorities would be in their best interests, indicating that it was likely to lead to a poor outcome: "Because then you're a lesser person. They treat you like you're a lesser person".

4.1.2 The impact of disability on a person's life

There were several indicators that a person's disability could impact the ways in which they communicated to others, as well as their overall quality of life. John, a man with intellectual disability, had a gregarious personality according to his brother William, but had difficulty reading social cues and understanding personal boundaries in interacting with women. Similarly, Amethyst, a First Nations Australian woman with intellectual disability was reliant on her mother Agnes to assist with decision-making in all aspects of her life. IB, a First Nations Australian man with intellectual disability experienced difficulties verbally communicating with others. His mother reported that he can become "agro": "If he's arguing with anyone, he'll just want to hit that person because he can't express himself in a rush...It's just because he gets really frustrated and he don't know what to say and do".

Participants with psychosocial disability often found aspects of their condition debilitating. Jilly Jack, the mother of Bill, a man with bipolar disorder and ADHD, explained her son's need for control in his life – something that can feel undermined by the symptoms of mental illness:

And the way he controls his life now is saying a lot of no's to me, a lot of no's to support and help. And unfortunately, because of his anxiety and his social phobias and all the stuff that's gone on that's not helped over the time, he'll say to me, "Oh look, I can't get work because I've got a criminal history."

Bill's disability needs have become more complex as he has aged as a result of illegal drug use. Jilly Jack shared that Bill needs others to have empathy and patience with him, "because the drugs have affected his frontal lobe."

JA, a man with cognitive/psychosocial disability, talked about the difficulties he experienced from childhood when he reacted to other students, which he described as trouble self-regulating:

No one knew or no one had an understanding of how to approach that situation. But what they'll do is they'll come up and grab me and then what you think is going to happen? I'm not going to stop. I'm just going to start kicking, screaming, and things like that because I'm not regulating, I'm not regulated.

It was clear from many accounts of people with disability and family members that a person's disability could be misinterpreted by others. Misunderstandings could arise regarding a person's communication styles, and behavioural cues which could create challenges in personal interactions.

The impact of disability on a person's life is best understood in relation to other social, economic and cultural factors. The next theme outlines the various forms of adversity participants experienced as a result of their social, economic and cultural position.

4.1.3 Living with adversity

Many participants with disability reported experiences of poverty, homelessness, child protection involvement, violence and abuse in their lives. Many of these issues were intergenerational. DT, a First Nations Australian man with cerebral palsy reported that his father had a history of drug and alcohol abuse and that he and later DT, were often targeted by police. JA, a man with cognitive/psychosocial disability described a childhood which involved frequent moving from town to town with his mother, and a father who had been in prison and abused him when he was very young. JA's parents had been in out of home care (OOHC) as children and had their own experiences of mental illness and problematic substance use. Peter, a First Nations Australian man on the autism spectrum had multiple experiences of being bullied at school, which sometimes led to being hospitalised. At the age of 6 years, Robert, a First Nations Australian man with psychosocial disability found the dead body of his brother who had committed suicide. All of these experiences, mentioned only briefly here, speak to the ongoing trauma that participants experienced.

Loneliness and the need to connect with others could lead some participants with disability to associate with others who exploited and harmed them. Amethyst, a First Nations Australian woman with intellectual disability became entrapped in a domestic violence relationship with a man who was a convicted paedophile. The man controlled her money, sold her medication, and isolated her from work and family. Amethyst was threatened with a machete, drugged, beaten, and raped on a daily basis. Amethyst shared, "I quickly learnt that 'no' was not an allowed word". The man was successful in getting a DVO against Amethyst, but Amethyst never managed to get a DVO against him.

Several participants spoke about living in unsafe environments which could trigger traumatic responses and culminate in offending behaviour. JA, a man with cognitive/psychosocial disability described living in a public housing block of units:

I had a paedophile below me, okay, I had this new neighbour who moved in who was very noisy and intrusive towards me and it made me really on edge. Because I'm in the middle, and then you've got diagonally above... you've got [an] ice addict and a guy who died of suicide and had to be laddered out by a fire brigade.

JA had requested a transfer from the Department of Housing and was on a waiting list for four years, only to eventually be told "we've mucked your transfer up, sorry". Tensions arose between JA and the neighbour upstairs during COVID lockdowns which led to a physical altercation:

So, I was very heightened because I've got a threat upstairs, I've got that downstairs, I've got that over there, and I'm stuck at home and my supports, pfft. So, what do you think's going to happen? It was bound to happen and then I basically lost my shit. And I threw water at her, I went ballistic at her.

Michael, a man with psychosocial disability argued for more compassion from CJS authorities and the need for those in power to recognise the traumatic backgrounds of offenders: "Some guys have really been through some shit. As well as being abused, they were on the street at a very young age, fending for themselves, and yeah, living that crazy, hardcore life at a very young age." He felt that a "hardcore" approach did not work, failed to "correct", and nothing would get "sorted out".

4.1.4 Community supports outside the CJS

While most of the interview questions to participants with disability and family members were directed towards the CJS, participants often briefly discussed the community supports they received outside this system. Participants accessed a variety of community services, depending on the person's circumstances and their disability. This included disability support, mental health support, drug and alcohol counselling, victim support services, public housing, and boarding houses and hostels. Some participants also were involved in government services other than the CJS as an involuntary client, usually as a child/young person through the

child protection services, or involuntary hospitalisation due to mental illness, or having their finances managed by the Public Trustee of Queensland.

There was a mixture of experiences with disability support organisations. William, the brother of John, a man with intellectual disability, relayed several experiences of poor treatment of John by disability support organisations. This included being over-medicated and locked out of the house in a group home setting. John was also physically assaulted by a co-worker with disability in his supported employment workplace.

Four participants were interviewed through an NDIS funded support service which catered for First Nations Australian people. These participants reported they were grateful for the support they received through the organisation, including one participant, Junior who was actively supported to engage in his love of Indigenous painting. Other participants mentioned the support they received from disability support workers through NDIS funded plans, which appeared tailored to their individual lifestyles. In contrast, a few participants with disability had applied to become a participant in the NDIS but failed to meet eligibility criteria. For example, Reggie, a 47-year-old man with degeneration of the spine was in constant pain and used a wheelchair for mobility and had given up for the moment on applying for NDIS funding.

Reports of experiences with mental health supports also varied. Participants with disability spoke favourably of mental health professionals, if the practitioner was personable and appeared to accurately diagnose issues and assist the person to manage on a daily basis. JA, a man with cognitive and psychosocial disability spoke of how he was helped by his mental health social worker to self-regulate through dialectical behavioural therapy. His earlier experiences of mental health care in foster care were less supportive:

Everyone in Child Safety, and you'll hear this a lot, "Have a pill. Have a pill. Go to a psychiatrist." And then they'll chop and change, chop and change, and then the next social worker comes on because the other one's quit. There was no transparency, there was no order, there was no individuality, and that obviously leads to a systematic failure in the youth, and then you get Youth Justice issues later on.

The importance of good relationships with health practitioners was touched upon by Jilly Jack, mother of Bill, a man with psychosocial disability. Bill had seen multiple psychiatrists but had "progressively eliminated any supports" related to medical care. His most recent visit to see a psychiatrist in hospital with Jilly Jack failed to uncover key concerns in Bill's life:

It just seems that the most recent one was by a doctor who spent half an hour with him, and then she spent probably 10, 15 minutes with me and asked me about stuff, and then I asked her, I said, "So, did you ask him questions like trauma? Did you ask him a question, has he got any history in his family about bipolar as a genetic predisposition? Because I'm just curious that you've come up with ADHD in 20 minutes." And I said, "You don't realise what, fundamentally, you're saying to me?" So she goes, "Oh no, everything's fine. Don't worry about it." I'd have to say I couldn't get my son out of that hospital quick enough.

It is important to note that the majority of participants with disability in this study were recruited via community organisations and therefore they were likely to be currently accessing some kind of community support. As a consequence, these findings may represent people with disability who are more supported than those who have no connection to formal services. Even in this case, participants' lives were exceedingly difficult, as evidenced by the types of offences people disclosed as discussed in the following section.

4.1.5 Types of offences

The focus of this research was on participants' experiences of the CJS, and as such, interviewers seldom asked detailed questions about the nature of a person's offence or alleged offence. However, in the process of telling their story, participants with disability often disclosed criminal activity they had been charged with. The ways in which these activities were described may not always be reflective of the official charges, as participants often used their own terms to discuss offences. The majority of reported offences involved physical assault, public nuisance, domestic violence and theft. Some reported offences related to the person's problematic substance abuse, and a small portion related to sexual offences. Participants' accounts of criminal

activities often pointed to their interpretation of events, their level of understanding of legal terminology and the degree of trauma and stress at the time of the activity.

For some participants, it was important to explain the factors that they felt influenced them in engaging in criminal activity. Jilly Jack, mother of Bill, a man with psychosocial disability, explained the complex connection between mental illness and substance addiction: "I mean, Bill's trying to support a drug habit, because most of the time he's not getting proper medication. And this is the whole complex issue of what's the difference between a disease and the addiction."

Frederick (pronouns they/them), a First Nations Australian with intellectual disability spoke of offences that appeared to be very much influenced by people close to them. They had observed their sister change price tags on clothing when shopping to purchase an item at a cheaper price. Frederick decided to try doing this but did not seek to conceal what they did: "One day I thought I'd give it a go. But here it is, I do it right out in the open, in front of store management. You know, cameras and everything... And got busted straight away." In addition, they could not see that what they did was shoplifting: "How could it be shoplifting because I actually paid something for it?" Frederick's understanding of what happened and their inability to engage in conscious pre-planning to hide the behaviour from others, meant they were caught straight away by store management.

In another incident, Frederick was arrested for driving under the influence. They had been in a relationship with a man who was physically and emotionally abusive: "This guy was bashing the fuck out of me on a daily basis." At a party the man wanted Frederick to go and buy him a meat pie, but they had been drinking:

He flogged me up and said, "Now, get in the fucking car." Pushed me in it... I drove out, down the street. By this, he'd already called the police on me. Drove over a couple of wheelie bins. I still remember that part. I was fucked. I was gone. Up this street here into the garage. Get there, got the meat pie, left my keys on the counter. That's how pissed I was. They brought them out to me. By this, the cops were there. I was sitting in the driver's seat. I got done 10 times over the legal limit.

In this situation, the offence largely occurred after being influenced and coerced by an intimate partner.

Amethyst, a First Nations Australian woman with intellectual disability also described her offences as acts in which she was coerced by an intimate partner. Amethyst was entrapped in a domestic violence relationship with an older man with an alleged history of paedophilia. When she was finally able to escape the situation, the Department of Housing advised her to relinquish her unit and everything in it. The police were subsequently able to inspect her laptop and found child pornography:

Agnes (Amethyst's mother): So, that's when they got her laptop. So, whatever he's done, he's done on her laptop. She bought it and was never allowed to touch it.

Amethyst: The only time I was allowed to touch it was when I signed into it on my birthday, when I bought it for my birthday... I was not aware of anything happening. I am disgusted, because what he's probably made me do. If it is, I would never do that. It would have had to have been a life or death situation.

Bernadette, mother of Justin, a 19-year-old man with Asperger's Syndrome reported that her son was entrapped by an undercover police officer who pretended to be a 15-year-old girl and sent him a friend request online. Bernadette explained, "He [Justin] didn't go surfing the internet, hunting or being a predator. Do you know? He was not looking for a girl. They came to him and he was so, "Oh, wow."" When Justin arrived at the location where he was to meet the girl, the police asked him what his intentions were, and Justin responded that he was going "to take her back to the hotel." Bernadette believed that Justin did not really understand what that meant, and from her accounts the police were not aware of Justin's disability until after he had been arrested and released on bail.

Other participants spoke of experiences where they regarded that the person with disability was falsely accused. For example, Mrs Peacock, mother of Peter, a First Nations Australian man on the autism spectrum, referred to several times when Peter had not committed a crime, but had been present when somebody else had, and was present when police were called. Peter had made friends with people who "were not very nice". For example, he made friends with another resident in the hostel he was staying:

And we didn't know that this boy that he'd become friends with had a criminal history that was pretty bad. And he had a vehicle and he asked my son if he would like to have a trip down to the coast, which he said, "Yeah, sure, let's go." Not realising that the car was actually a stolen vehicle.

Peter had fallen asleep in the car, while unknown to Peter, his friend changed the number plates on the car. "And it turns out that not only had he [friend] been stealing the car, changing the number plates, but he'd actually gone into stores and stolen clothes, foodstuffs, filled up the car, drove off without paying..." Mrs Peacock explained that Peter's involvement with police was often "a matter of wrong place, wrong time."

A few of the offences described show the ways in which people with disability may feel trapped within abusive and exploitative relationships, and thereby coerced into offending. Other examples show a lack of understanding of what constitutes illegal behaviour. For some participants, offending occurred through association with others, or as a way of trying to address symptoms of mental illness, as in the case of Bill and his illicit drug use. These examples were often critical turning points which led people into contact with CJS authorities. The next section discusses participants' perceptions and recollections of contact with police.

4.2 People with disability and the police

4.2.1 Seeking help from police

Although this study focuses on the experiences of people with disability who have come into contact with the CJS as offenders and alleged offenders, it is important to note that many participants also sought help from the CJS, and in particular, police, as first responders. Several participants had contact with police as victims of crime but reported that police often failed to adequately investigate the crime. The accounts shared by participants were what they recalled, and there may be some detail missing about police procedure and responses. Amethyst, a First Nations Australian woman with intellectual disability and her mother Agnes frequently called on the police when Amethyst was living in a controlling relationship. Agnes visited the police every second day and was informed there was nothing they could do. Amethyst escaped the relationship and reported the abuse at the police station. A male police officer took photos of areas on Amethyst's body where bruising occurred, but Amethyst reported that they did nothing with the photos and she did not know whether the photos were "in the system". She could not recall if a female police officer was present when photographs were taken. No charges were laid against the perpetrator. An officer from the Vulnerable Persons Unit became involved and approached Amethyst in front of the perpetrator to ask her if she wanted to leave. Agnes explained, "Two things that happened every time they came and asked her. He either had his hand on her shoulder or he was standing behind the police officer, just giving her death stares...They [the perpetrators] need to be removed from the situation."

PW, a First Nations Australian with physical disability in FNQ reported being physically assaulted by a neighbour and seeking assistance from police. His story indicates how individual and institutional racism can be an everyday occurrence for First Nations Australians in FNQ and these attitudes imbued police practices. In PW's situation, the assistance from police did not eventuate, but, according to PW, led to ongoing harassment by police officers:

And so he [neighbour] bashed me, broke my wheelie walker, smashed it up totally, and then dragged it across my brand new laid floor and scored it all. So I rang the police, and the police attend and I said, "Take pictures of me and come inside and take pictures of my broken wheelie walker, take pictures of the scored floor." And he said, "No. We'll go and interview the guy next door."

PW had three witnesses to the assault, but the police officer refused to press charges when the neighbour said it didn't happen. "He said, "Look, the other guy in there is quite young, attractive, articulate, so is his wife. You're black, you're ugly, you're old. Who's the magistrate going to believe?" and off he walked." After appearing in court, PW was issued with a police directive preventing him from entering his neighbour's property. He was questioned daily by police for several months: "He [it is unclear from PW's account if this was the same police officer each time] will stop me in the street, pull his notebook out, "Keeping your nose clean, PW?" I'd say, "I'm never doing anything, mate." He'd write in there. And he's writing down that he's made a welfare check." Racism, as PW explained, "is still strong here in town". Speaking specifically about the racism embedded in policing institutions, PW notes that "there's plenty of Royal Commissions and inquiries

to show that [they] really don't know how to do [their] job. When it comes to Aboriginals, they overdo it". PW shared that he was about to get a motor scooter soon, but "sure as eggs, the first time I take it to town, they're going to pull me over and they're going to breathalyse me and they'll do it right in the middle of town."

Despite these difficulties with police, PW also received help from one police officer who at other times had harassed him:

I had a fall in the backyard, way down in the corner, and I couldn't get up because that was when I crushed my vertebrae, and he was on an incident two doors up and next door was having a party and they were just laughing at me and that sort of thing. But [police officer] actually heard me and he jumped two fences to come to my rescue and he organised the ambo and he was the one who held my head steady and all that sort of thing.

These accounts of help-seeking from police are important in that previous experiences can shape future perceptions of police, including the level of trust in police officers.

4.2.2 Views of police by people with disability and family members

Perceptions of police by people with disability were likely to be shaped by a number of factors, including past experiences as above, a person's overarching views on authority, and previous family history of involvement with police. Frederick, a First Nations Australian non-binary person with intellectual disability spoke of their distrust of police officers and their discomfort in revealing their disability: "You walk in there and they've already got you sussed out. If they think you're normal, they're going to help you. If they think you've got an intellectual impairment, mate, you're screwed before you even frigging open your mouth." Others' understanding of police may have been seen through the lens of mental illness. JA, a man with cognitive and psychosocial disability, likened police to wolves:

There's a wolf following me. To put it lightly, there's a wolf following me because they're worried I have power, and I do... Some people in high positions are so sociopathic. They just can't stop. It's an ego trip, power trip.

Both JA's parents were known to police, and JA was constantly concerned about his name being flagged by police.

Negative interactions with police were often framed by people with disability in broader terms of how they felt they were treated by society. Michael, a man with psychosocial disability commented that most police that he has encountered "think of you as a useless scumbag... you're just a drug addict... like they're better than you." PW, a First Nations Australian with physical disability in his 60s reported on the historical tensions between police and First Nations Australians as one indicator of Australian society's ongoing racism. He relayed his experiences of police surveillance from when he was a child in a rural town in NSW, to living in Sydney and engaging in protest marches. Many of these earlier experiences involved being "subject to a copper pulling us over" and working collectively with other First Nations Australians to "form a scrum around you" and protect oneself from police harassment. PW shared that police still used the "trifecta" of offences on First Nations Australians, "which is drunk and disorderly, obscene language, and resisting arrest".

There was some acknowledgement of the demands on police by one family member, Bernadette, mother of Justin, a man with Asperger's Syndrome. While Bernadette believed that the police had entrapped her son, she also recognised the challenges that police faced in their work: "I don't blame the poor police, because they've got a lot to learn and deal with. They almost have to be psychologists as well."

4.2.3 Police views and responses to disability

Both people with disability and family members reported often that police had a lack of understanding about disability. Jilly Jack, mother of Bill, felt that police only saw her son as a drug user and failed to take into account his mental illness. She has read police reports on Bill and has thought, "Oh my god, I can't believe someone's written this. Where's this person come from and where's their education?"

Failing to recognise, understand or accommodate for the person's disability could lead to people being interviewed without an independent third party or support. In such circumstances, police subsequently failed to modify their communication practices in their interactions with people with disability, and participants were

left feeling confused, anxious, and unheard. Jilly Jack reported that the police very rarely ask for her to come and sit in on a police interview with her son Bill: "And they'll say, "Oh well, he's too old." And I'll go, "Well, that might be the case, but I can tell you there's no capacity at this point in time." But they won't come near me."

First Nations Australian participants with disability spoke of the need for police accommodations related to disability and culture. PW, a First Nations Australian man with physical disability felt that police did not understand the importance of story in his culture. "They don't take the time to listen." Amethyst, a First Nations Australian woman with intellectual disability could not recall a time where she had a support person in a police interview: "Oh, I know I had the right. Especially when I was in lock-up and I asked multiple times to speak to a police liaison officer or an Indigenous liaison officer, but no, they were nowhere to be seen." It is unclear from Amethyst's account if she had been denied access to liaison officers or if there were not officers present and able to attend.

IB, a First Nations Australian man with intellectual disability appeared to receive some accommodations by police in recognition of his disability. IB was reliant on a family member to be present in police interviews. His mother said that the family member helped explain to IB if he needed to do a statement, "He would've gone to jail a lot of times because he just can't express himself." She has explained to police about IB's disability and made sure that IB had his epilepsy medication with him if he is detained in the watch house. The police, who initially "tried to go rough with him", now "just talk nice to him and they'll just walk with him. They won't put him in handcuff. He just goes with them." IB also described one female police officer as "good", because she made sure he had his medication in the morning and evening when he was in the watch house. Despite these improvements in interactions with police, IB's mother acknowledged the need for family to be present in IB's communications with police, and so she holds grave concerns about what will happen to her son if she is no longer around to protect him.

4.2.4 Practices by police

There were several reports from participants about how police actions could lead to escalation of behaviour in a person rather than de-escalation. For example, Uncle from FNQ spoke of interactions between police and IB, a First Nations Australian man with intellectual disability after a dispute with neighbours – "No thinking, no preparation. They could have just talked to him, calmed him down, and everything would have been forgotten. But instead, they charged him, all the rest." Uncle spoke of the value of Aboriginal and Torres Strait Islander Liaison Officers, who he felt were under-utilised:

They know everybody, they would sit down, have a yarn, a laugh, and a joke, sort it all out, and give them a hug and say goodbye and that's it. Defuse the whole situation, put it into its proper perspective through knowing how to deal with it.

In contrast, Uncle explained that the white policeman "always wants to escalate it" when he sees First Nations Australians. "And then deep in the back of his mind, if there's a disabled person, he also wants to make fun of that. Unfortunately, that's the culture."

Staying in the watch house could also be unsettling for people with disability. Michael described the watch house as "a bit uncomfortable", and implied that this was a deliberate strategy on the part of the police:

You've got these three little fucking squared bits of mattress to lay on, just with a shitty little blanket, no pillows. No pillow. You've got to use... your clothes. And it's always really cold in the watch house. And when you reckon it's because they make it like that to keep you calm apparently. I don't know.

Mrs Peacock spoke of a time when her First Nations Australian son Peter who was only 19 years, had been released from the watch house at 3am with nowhere to go. She was concerned for his safety, as he had no medication on him, and had trouble recognising when other people meant harm:

Because he had no money, no food, his phone didn't really work, he had to borrow somebody's phone charge down there, a complete stranger. He'd never been away from home like that, that kind of distance away... I had to actually organise somebody at home to go and pick him up and bring him back.

One participant spoke of direct violence from police. Robert, a First Nations Australian man with psychosocial disability reported an incident of police brutality when he was 15:

Well, when I was younger I was sniffing glue, and we ran from the cops. And the cop was running, he was a big fella, and I was like, "You need to lose some weight, mate," and he said, "Why'd you call my partner a slut?" He must have thought I was talking to the chick that arrested me. So he grabbed me by my hoodie and started slamming my head into the ground... That's why they didn't charge me. They just let me go... If he charged me, I would've told the judge.

Robert also shared that he did not like sharing information with police officers, "just because they twist your words around."

JA also recalled being in a physical altercation with police. He reported a time when he was "unregulated" and the police "slammed" him against a wall and into the ground. He was taken to the watch house and stripped of his clothing, as he said the police thought he was suicidal. "I was really scared because they took my socks off and my underwear and threw a towel at me to put on." JA shared that he had "black eyes" the next day – "And the judge gave me no convictions because he saw my mug shot and he knew that it was dodgy."

4.2.5 Access to diversion

While there were several negative accounts of police practice, there were also several examples from participant interviews of the valuable part police played in diverting people with disability from CJS involvement. Robert, who reported police violence above, also relayed how interactions with police ended in him being diverted to a community mental health unit. His account indicated that the police used physical force in their interaction with him when he was taking ice, but that the outcome diverted him from the CJS:

I was schizing. Someone called the cops because they seen me yelling and screaming at these people, which I've seen. And my dad came and picked me up and the coppers rocked up and then, yeah, I was like, "No, I don't want to go back there," and so I ran. But I didn't mean to run. It was like I was possessed. And the coppers tackled me, put their knee into my back, arrested me, and they sent me to jail. Instead of going to court, they sent me to Mental Health.

Other participants also spoke about redirection to mental health services. Junior, a First Nations Australian man with Aspergers Syndrome was hospitalised for a week after threatening a female friend with a knife.

As previously mentioned, Aboriginal and Torres Strait Islander Police Liaison Officers can play an important part in diverting First Nations Australians with disability from criminal justice involvement. An Elder from FNQ believed police officers did not use this resource enough for fear that they would "be out of a job":

Because the police want to take the authority and keep their authority down... It's all part of the unfortunate prejudice... Don't let them get too big for their boots, because the next thing you know, they'll be taking over... We want people to be dependent on us. We want to do our thing.

PW, a First Nations Australian man with physical disability from FNQ also spoke of police not taking advantage of Aboriginal and Torres Strait Islander Police Liaison Officers. The "police have all the power, the coppers here won't listen to the liaison officer. Generally, if an Aboriginal person's arrested...the liaison officer doesn't find out about it".

Overall, stories about police interaction featured across the majority of interviews with people with disability. As the first point of contact into the CJS, police responses play a critical role in determining outcomes for people with disability. While there was some evidence from participants that police assisted people with disability to obtain important medical and mental health care, there were also many accounts which indicated police lacked knowledge and recognition of the needs of people with disability. These shortcomings were often compounded by individual and institutional practices which failed to consider and respect First Nations Australian culture. This appeared the most in the stories of First Nations Australians from FNQ, who unanimously spoke of racism as being deeply embedded within the FNQ police force. The next section examines the experiences of people with disability and family members in the courts and legal system.

4.3 People with disability and the courts and legal system

4.3.1 Case study: John

The following story was conveyed by John's brother, William.

John is a 52-year-old man with intellectual disability. William, John's brother describes John's cognitive ability as equivalent to a five- to eight-year-old. John works in supported employment for people with disability. He has a very trusting nature. He likes to befriend people and doesn't always understand personal boundaries.

As a young man, John was on his own in a public park one day and was sodomised in the toilets. The incident was reported to police, but the police never acted on the information.

John has been in trouble with the law only one time. William received a phone call one Sunday night from the hostel where John was staying. The police were looking for John because apparently, he had raped someone. William raced to the hostel but the police had already taken John to the watch house.

When the police took John away to ask him questions, they soon realised that John had a disability and that he couldn't defend himself. So they returned him to the hostel. The police told William that John had been charged with rape and would have to appear in court in the coming weeks. John was placed on a good behaviour bond and was ordered to remain at home. John didn't understand the requirements of the order. John is a guy who is really, really social and likes to go everywhere and do everything. At the time, John would lie to William and tell him he had stayed at home, when there were times when he went out.

William explained that John has many communicative challenges in police interviews: "He didn't understand what the word "rape" meant... When John talks to people, he will often answer questions and give answers... to make you happy with him."

William got in contact with a justice support program of a disability advocacy organisation and the worker from this program referred John to a pro bono lawyer. John's legal team educated John so that he knew that when he went to court, this allegation of rape would be dealt with in a court:

[The experience with the CJS] had an indelible effect on John... he was shitting himself the day he went to court. And yes, it went to the Mental Health Court eventually, three years later. I mean, I've aged 10 years just going through this process with him and fighting with people... My greatest concern, was that John would be held accountable for something that was just so innocent and that he did not do anything deliberate. And it could have all just panned back to that initial conversation with the police to say, "Did you rape this girl?" ... He might have just said yes. But he didn't understand what the word "rape" was."

Prior to attending the Mental Health court, John saw a forensic psychologist who did a thorough report. It was determined that John had no understanding of legal proceedings and did not understand what a plea was. The judge was given copies of John's psychologist, psychiatrist and occupational therapy reports and evidence that John was getting far more support in the community than ever before. A plan was devised for John that provided community support wherever he went. He also accessed some sex education classes.

As John's decision-maker, William got to read the statements from the complainant. "I get where the mother was coming from. I really do. I truly do. If it was my daughter I'd be concerned... The girl was sexually active, but Mum just didn't want to accept that.... John and the girl were let down that day by carers, and he's since been let down by carers... But yeah, the girl [who] was looking after him that day, she just left the house and went out for a cigarette and took her eyes off the ball and these people got up to some shenanigans."

When thinking about the experience of advocating for his brother, William reports, "I'll have fights every day of the week when it comes to John."

The impact of having an intellectual disability presented some challenges for John in terms of understanding healthy social boundaries with others. It is unclear what support John was able to access regarding relationship education, other than after he had been sexually assaulted and later charged with rape. John's reliance on disability support workers, a common life experience for many people with intellectual disability,

also complicated the outcomes of his story. According to William, paid workers did not provide adequate supervision which led to the accusation of rape by the complainant.

Police responses to John failed to accommodate for John's cognitive difficulties or the need to adapt their communication. William, who could have been of great assistance in the police interview was not given the chance to provide that support. William's more active involvement in John's court hearing, as well as the assistance of advocacy services diverted John from the CJS and led to more supports in the community to prevent any future CJS involvement. While this was ultimately a good outcome for John, the toll upon himself and his brother is evident in the story. This next section discusses how people with disability and their families experience the court system, covering their feelings about appearing in court, the nature of the legal representation they accessed, and the supports they received.

4.3.2 Appearing in court

Many participants spoke of the anxiety which preceded appearances in court, with some participants still waiting to appear in court at the time of being interviewed. In many instances, people with disability had to wait for years before their case was heard. Anxiety could become elevated if the person was not provided with appropriate information about court proceedings, and if others around the person told stories of what might eventuate if found guilty. Justin was told graphic stories by an acquaintance about what other prisoners do to child molesters. As a result, he experienced disturbed sleep up until his court hearing. His mother Bernadette reported knowing little about legal proceedings and experienced nausea and vomiting in the few days leading up to the hearing.

GT spoke of the busy environment of the courts and how that could be overwhelming:

Every day you go to court there, there's got to be 60-odd people going to court that day. And it's so overwhelming to begin with because you've never been involved with it before, you're not getting heard, nobody's actually listening to you, and then when you go into the courtroom they're not even asking you for your side of the story.

Anxiety could transform into anger in the courtroom when participants perceived that judicial authorities lacked understanding of the person's disability and circumstances. JA, a 25-year-old man with cognitive and psychosocial disability shared how difficult it was for him to self-regulate, and how court officials lacked empathy and did not take this into account:

And you think how many times do you leave a house every single day and have to interact with people every day. It's very difficult for people with trauma because you can't just isolate yourself from the world and avoid any conflicts. It is so difficult and this is what the justice systems value. They are too clear-cut... These judges are on a bloody big payroll and they're just in there not going back and having to do further training which they really should be doing.

Similarly, Jilly Jack spoke of her frustration in needing to advocate for her son to make sure information about his NDIS supports was circulated in the Supreme Court:

I just thought, "Oh, bloody hell, you've got to really be on the ball here because this is not open and transparent and this means nobody's actually doing a lot of the background information on these people..." I'm talking about the fact that there was not an acknowledgment that he does suffer very bad bipolar and that he has got the comorbidity problems...

A number of systemic challenges were described by an Aboriginal Elder from FNQ which could impact negatively on the experiences of people with disability. IB, a man with intellectual disability was supported by Elders to attend court in Cairns and had travelled a significant distance for his court hearing, only to find the hearing was adjourned. Uncle explained the difficulties:

It's more to do, in [FNQ] there's a huge workload backlog from COVID. And there's not enough magistrates to cover everything, so they are flying everywhere... So the inefficiency, when a secretary could have phoned them and said, "Mr X, don't worry about it. We'll see you on the..." The police are short staffed, the prosecutors are short staffed, the defence lawyers, ATSI LS, running around like headless chooks. It's in a state of confusion. Simple as that.... And the ones who'll get affected by the

mess are those who have pending charges going through our courts. So, we've got to make sure that the magistrates and prosecutors don't get too excited and exaggerate things just to dispense with it.

PW, a First Nations Australian man with physical disability also from FNQ, spoke of the difficulties that Aboriginal and Torres Strait Islander people experience at court:

Even when it goes before court, the language barrier, they'll be asked a question, "You didn't do this at all, did you?" And the Aboriginal person will say, "No." They'll take it down as saying he's agreeing to it... and the white jury or the magistrate will take that as acceptance of the statement that was just put to him. And that's a shameful thing.

It is clear from the above accounts that appearing before court for people with disability and their families was a highly stressful experience. While the same could be said for any person about to go to court, participants in this study may have felt more alienated by a lack of understanding and acceptance of disability and in many cases, First Nations Australian culture. In addition to managing any anxieties related to the court hearing, participants with disability also required legal representation to participate in court hearings.

4.3.3 Legal representation for people with disability

Accessing appropriate legal representation was difficult for both people with disability and family members. While many participants accessed Legal Aid, there were instances where family members incurred significant financial expense. Agnes, mother of Amethyst, an Aboriginal woman with intellectual disability, paid \$5000 to appoint a barrister in order to have a domestic violence order against Amethyst overturned. Bernadette outlaid \$30,000 to ensure her son, Justin, had legal representation in court. Michael, a man with psychosocial disability advised, "If you've got serious cash, just spend it on a lawyer, because they're not cheap. Most of us just use Legal Aid. And then it's a lucky dip there, whether you get someone that actually cares or not."

Others could not access Legal Aid representation. GT, a man with psychosocial disability was reliant on the duty lawyer to represent him in court regarding a DVO. He had rung around many non-government organisations (NGOs) for financial assistance, but they were unable to help. He was able to receive a small amount of assistance from Legal Aid, but as he was the respondent this help was minimal and consisted of phone consultations, which "didn't really amount to anything", and the advice was difficult to understand. GT also felt the assistance from the duty lawyer was less than satisfactory:

He [duty lawyer] gets me into court, an hour later I'm out of court, he can cross me off his list of things to do because they've got a result. Because that's what he is, he's result-orientated. He's not justice-orientated. He's too busy for that.

Bernadette, while searching for legal representation for her son Justin, had to screen lawyers for their understanding of disability:

I called one on Friday, and the one on Friday says, "I'll talk to you on Monday. Come and see me on Monday." I said to him, I said, "Oh, Justin has autism," and he says, "Oh, what's that?" I was sort of, "Oh god, I have to start from scratch here."

4.3.4 Supporting people with disability in court

With appropriate supports, the stressors of appearing in court can be reduced for people with disability. William told how his brother John, a man with intellectual disability was linked to a justice support program and a pro bono lawyer. He was supported to visit court on a few occasions to familiarise himself with the environment. This is important for many people with cognitive disability who have an experiential way of learning.

Appearing in court could be a turning point for a person, if they received the right supports. DT, an Aboriginal man with cerebral palsy and psychosocial disability received support from Murri Legal Aid (Legal Aid Queensland), who helped explain the legal terminology involved in the court case. The judge issued DT with a good behaviour bond: "He just looked at me and said, "Look, you've got a clean-cut record. I'd be surprised to see someone with your make up here. Don't appear again.""

Family members can be important supports to people with disability in court. John, a man with intellectual disability had the support of his brother William, who acted as an intermediary for any communication

challenges the legal professionals had in interviewing John. In other incidents, family members can assist the person outside of the courtroom. Mrs Peacock, mother of Peter, an Aboriginal man with Autism and ADHD, felt it was important that she did not attend court with Peter:

I had actually told him, before any things being taken to court, I had told him that if ever he got himself into any legal trouble, I could support him, but I would not go to court and deal with what he has done. Because he knew right from wrong, even if he was with people that he knew weren't very good people. I told him that if he wanted to do silly things like that, that he had to deal with it himself with support from other people other than just myself, and hopefully that would change his life around a little bit for the better.

In many of the court hearings, Mrs Peacock would arrange for workers from the Aboriginal community health service to attend with Peter.

Of the 17 experiences of people with disability, either reported by the person themselves or a family member, 9 people with disability ended their experience of the CJS with the court system. The remaining participants either had time within a corrective services facility, and/or experienced probation or parole. The next section covers the experiences of people within Queensland corrective services facilities.

4.4 People with disability and the prison system

4.4.1 Case study: Reggie

The following story was told by Reggie.

Reggie is a 47-year-old man who has degeneration of the spine and spinal cord tumours. His condition means he is in considerable daily pain, and experiences spasms in his body.

Reggie was charged for domestic violence regarding something that happened 14 years ago. He was placed in the watch house for approximately five days. This contact with police occurred at a time when Reggie's fiancé had died.

I said, "Look, I'm not in the best frame of mind..." and they thought I was going to neck myself... I was emotional. I don't know, I was going to rip heads off. I don't know what I was going to do.

Reggie recalled how lost he felt, how his security had suddenly been taken away and he had lost all his belongings. He was placed upstairs in the cells where police could keep an eye on him.

Reggie was later transferred to prison. Reggie explained that he wasn't "processed normally" at the prison. "They thought I was going to neck myself. And I said, "Youse are fucking mad. Youse are doing my head in." Reggie reported that the prison officers made him "crawl along the fence." He asked them to provide a wheelchair, but they told him he could walk.

They're just sadistic. They made me walk. I said, "I can't walk no more." They said, "Oh, we'll have to go and get you a wheelchair I suppose." And I said, "Yeah, you will. Fucking come on." I said, "You want to piggyback me?" But you've got to remember, it's their house, not yours.

When asked if the prison authorities knew that Reggie had a disability, Reggie said "no", but later explained that he had told them straight away. He had told them about the titanium in his body, and his history of Ross River Fever. "Once you're processed, they know that they don't want to know. They can turn a blind eye in that first moment." Reggie relayed that when he went to get his prison uniform he tripped, and a prison officer "had a giggle":

I said, "Oh, funny, isn't it? I'll laugh at you when you're in a wheelchair." And he goes, "You're going to miss out on your dinner tonight." I said, "Yeah, good. The boys will fucking make sure I get the fucking buy-up anyway. Fuck you." Excuse the language. But what a thing to say. Like I said, "Animals in the jungle treat each other better."

According to Reggie, the prison never gave him appropriate medication. He explained that he received Panadol and Nurofen as PRN medication when inside, when he normally was on Palexia medication to manage severe pain which is continuous and long-term.

Reggie reported that he was very well looked after by other prisoners. He recalled a time when other prisoners advocated on his behalf so he could get access to the phone to telephone his lawyer. "I think people were real in jail than out here. And that's a sad thing to say." He said that a few prisoners tried standing over him, but he was able to reason with them:

There was a few blokes that tried standing over me and said, "Yeah, that's a tough move." I said, "But if I beat you, you're going to be embarrassed for the rest of your life. But you realise if you do beat me, you've got the whole unit to deal with then." And then you see them scratching their head like a chimp... It's not that hard. Don't pick on a cripple, aye?

Reggie described poor treatment from correctional officers with regards to his disability. He said officers would laugh at him or watch him "fail", yet this would make him more determined.

And then I'd purposely flick peas in their shoes. Honestly, I would do things so, "Oh, sorry brother. You know the disability I've got." Assholes, treat me like that... And then, if there was a little riot going on - See, a lot of the boys would flood their cells for whatever reason. I hated it. Anyway, they'd come in and go, "Right. Did you instigate..." I said, "Yeah, I did. I instigated it." So they'd put me in DU [detention unit].

For Reggie, taking the blame was "a bit of a hoax" or "social experiment" with prison officers. Being placed in isolation in the DU was okay, as he could get TV there. Reggie reflected, "What more can they do to me? Honestly, where my mind was at with what I was going through, no, I didn't care."

One time in prison, Reggie woke up in the middle of the night to go to the toilet and fell over. When the prison officers arrived, they told Reggie "Oh, you've just been on that subbie text [Subutex]." This upset Reggie greatly, as his fiancé had died from an overdose of Subutex while pregnant with their child. He felt further humiliated when he tried to get himself up and slipped. "And then I was just like, "Oh. I know I look like a spastic bit of fucking..." I don't know, I was terrible. But I couldn't move."

Reggie had another prisoner who acted in a carer role while he was inside. This was initiated by Reggie, who asked the prison officers for this assistance. It took approximately six weeks for this to be arranged. The carer shared the same cell as Reggie and helped him to make his bed, fold his clothes and assist with showering. Being a carer in prison was highly valued by prisoners. Reggie explained:

The boys started fighting because they were getting an extra 70 bucks on top of their 15.64 for buying. See, that's how much it was worth, because they started paying the carers again. So, I said, "Right, we'll divide it and we can all have a big sleepover if the fucking screws will let us."

Reggie relayed that one carer stood over him when he complained about him watching TV. "And then he tried bullying me... But anyway, he got sorted." The carer "got told" that he had to go "by the lads" (other prisoners).

The next carer "had scabies or something". A prison officer told Reggie that they had to burn everything. They put everything into plastic bags: "This bloke got punched up. Because hygiene is a very big thing in jail... Because what he was doing, he's scratching himself and then making people food and going, "There you go.""

At one stage, the prison authorities wanted Reggie to move to an upstairs cell, even though he used a wheelchair for mobility. He told the prison officers: "What? Am I going to fucking bunny hop it down every morning? How am I getting up?" They just wanted to make my life as hard as possible."

Reggie recalled times when other prisoners would take him for a walk. A prison officer might approach him after these interactions and tell him they would strip search him. In one incident, the prison officer stripped him and left him there on the ground for about 10 minutes.

In prison, other prisoners used Reggie's wheelchair as a weapon. Once they put it over another prisoner's head because the prisoner had gambled beyond his means and owed them. Another time other prisoners used the wheelchair to do "burnouts" on the oval, and the prison officers later confiscated the chair. Reggie feels there should be a separate section for prisoners who use wheelchairs.

Reggie's story points out the difficulties that can be experienced by someone who uses a wheelchair for mobility within a prison setting. His account of the ways in which prison officers viewed his disability indicate

dehumanising practices and a system under strain. While there were examples shared of friendship and support from other prisoners, Reggie's story also provides many examples of power struggles and violence between prisoners, and between prisoners and prison officers. Reggie's account of prisoner carers highlights some of the complexities of relationships between prisoners. It appears, a prisoner carer may address the physical care needs of a prisoner with disability, but there are also risks associated with such a role, which can include exploitation of the person with disability.

The following section summarises findings from people with disability who have spent time within Queensland corrective service facilities. It includes participants' perceptions of surviving prison and the supports provided. It also describes the challenges people faced when leaving prison.

4.4.2 Surviving prison

Four participants, 3 with disability and one family member (on behalf of a person with disability) shared information about being incarcerated in corrective services facilities. Being inside prison presented many challenges that could trigger a person's trauma. Jilly Jack found out that her son Bill, a man with psychosocial disability received a blow to the back of his head while inside. Jilly Jack was unable to ascertain from him how this occurred. Michael, a man with psychosocial disability spoke about the stressors involved in being transported in a corrective services bus: "You're sitting on a little seat, like a little plastic moulded seat, and you're just in this little cell in the back of the trucks... Just getting transported around is f**ing horrific for me because I'm claustrophobic." Bear, a First Nations Australian man with psychosocial disability was anxious about sharing a cell with another prisoner. This meant the other prisoner could hear the nightmares he was having and potentially tell other prisoners.

While Michael intimated that prison was an opportunity to detox and get clean, seeking support for his mental health condition was not always easy in an environment where showing any sign of vulnerability could lead to being targeted by other prisoners and, according to Michael, by corrective services staff. Michael has seen officers use intimidating tactics on other prisoners:

There were some guys, fucking crazy. They've got major fucking issues and they would give the screws hell, like spit on them or whatever they might do to them. Well, try and bash one of them, attack them. So, they would get that guy, and then they would probably put him - Sometimes I reckon they go, "Yeah, all right. We'll see how you go in this unit," boom, put him somewhere where they know that he might get sorted out. Maybe, they're trying to think, "We'll fix him here."

Michael had experiences of staying in the observation unit "with all the dippers" when he was feeling suicidal. He was also concerned that information shared with prison counsellors would be leaked to other staff.

Occupying one's self in prison was important for Michael, who sometimes could develop a routine and keep himself busy. Unfortunately, strategies to survive imprisonment were not so effective the last time he went to prison, and staying inside appeared to lead to feelings of depression:

But this last time, I've just been so down on myself for being there at all. I can't be fucked doing all that shit. I don't want to. All I want to do is fucking lay in bed and watch TV, that's it. Leave me alone.

4.4.3 Supports in prison

Participants reported the benefits of medical intervention whilst inside. The controlled environment and increased observation may have assisted participants in accessing medical care. Bill, a man with psychosocial disability apparently experienced better sleep inside prison than when he was living in the community, due to the psychotropic medication he received from a prison psychiatrist. Contact with the psychiatrist also resulted in a reduction in medication which was beneficial. Bear, A First Nations Australian man who struggled with PTSD and depression was prescribed Endep to help him to sleep, but the effects wore off in the middle of the night. On one of his times inside, Michael, a 40-year-old man with psychosocial disability was placed on a suboxone program to address opioid addiction which he found helpful: "it just helps you to relax and just not think about jail so much. Your jail time just flies when you're on the subbie."

Living in prison could also lead to poor health outcomes. Michael reported that he acquired an infection from using needles in prison:

I've got this bug that can kill you from using needles in jail, from the tap water, that the doctors told me come from the water from the taps. Don't use that water to mix up. You've got to use boiled water from the kettle. Yeah. And heaps of guys are getting this bug. And it can go to your heart, your brain. It generally sits in your bone. And it went into my lower back and it ate all out there in between the vertebrates. My bottom ones, it ate that gap, that cushion out, and now it's bone on bone.

Michael had been prescribed Lyrica to alleviate the pain in his lower back, but expressed concerns that the medication itself was addictive: "I used to overdose myself on it... I know now. I don't abuse that."

Life in prison could also have detrimental effects on participants' mental wellbeing, and therefore timely and effective responses by correctional staff to prisoner distress was greatly needed. Jilly Jack relayed an experience where prison officers acted promptly when her son Bill was on remand and had sent her a suicide note. She was able to ring the prison and request they check on Bill immediately. Bill had also told her about seeing a psychologist in one prison stay who he described as "kind" to him.

Michael, a man with psychosocial disability who had been in and out of prison, eventually engaged in counselling the last time he was inside. The time taken to feel safe enough to access these supports is notable, as it was his seventeenth stay in a corrective services facility. He was circumspect about the overall benefits of the counselling: "You're just there to be kept in jail and that's it. And they know they have to, by law, have these counsellors, and workers and they just do what they have to do, bare minimum. That's it. That's all it is."

Jilly Jack, as parent to Bill, expressed concerns about the care in prison, including the damaging effects to prisoners experiencing hours of shutdown every day; the lack of meaningful activity for prisoners with mental illness; and poor planning regarding who a person shares a cell with:

He [Bill] was hit on the back of the head, major injury for him, and all I knew about it was that he made me two phone calls and he lied about it. So, whether they told him to lie and not to tell me the truth, but he said, "Oh, I've got glandular fever." I said, "Oh. Oh, that's interesting, Bill. So, whereabouts is that happening? Whereabouts have you got that on your body?" And he just told me, "Well, I've got a cut on the head and some other things." And I said, "Okay." So I thought, "He's been told to lie."

Jilly Jack felt that the United Nations should be going into Queensland corrective service facilities and checking the practices there.

4.4.4 Case study: Bear

The following story was told by Bear

Bear is a 64-year-old First Nations Australian male who reports having PTSD, anxiety and depression. He is currently getting support and accommodation from a First Nations Australian drug and alcohol rehabilitation program.

Bear was born in regional Queensland. As a teenager, Bear smoked a lot of weed. He got caught with stolen goods, and marijuana seeds and went to a youth detention centre at around 14 years old. Bear was sexually abused by other young people and staff within the detention centre.

Bear dealt with the pain and trauma by using drugs heavily. He got into LSD and cocaine and these made him feel better in himself. He felt no one would believe him if he told them he was raped at the boys' home. He eventually left school, went bush and got himself a job involving machinery.

All the time Bear was working, he was using drugs. He would run out of work and buying drugs became too expensive – so he had to start selling them.

Bear went to prison for the first time when he was 36 for drug trafficking. There were psychologists in prison you could talk to, but Bear was cautious: "Like you go in there and you can speak with a psych, and I never relayed my story to them the first couple of times I went in. Because I was thinking, "Oh, they'll get word out to the inmates the next minute I'm a, whatever, gay or whatever." That's how people think."

When asked about support to deal with the trauma of having been sexually abused, Bear said there was no program for it. "For the drug issue, they make you do Drug Arm and that courses in jail, but then nothing.

Everybody passes. Do you know what I mean? You've just got to copy off old mate there and he's a winner, so you get on."

Bear had to abstain from drugs once he was inside, and the only drugs he was prescribed from doctors was Endep which helped him sleep. However, he would still wake up at 11pm or 12am and have trouble getting back to sleep. This was tormenting.

Bear has been to prison four times. Bear's last time in prison was for two years. He was in a centre which had a 20-hour lockdown, and they doubled up the cells. Bear struggled with this arrangement. He started getting bad nightmares and punching the wall in his sleep. "I'd done all my knuckles punching the wall in me sleep." He was reliving what had happened in the boys' home. It was really hard to share a cell with another man. The other man in the cell could be disturbed by Bear's nightmares, and tell others about it. "They talk to other men and next minute you're a psycho because you punch walls and you do all this sort of stuff. It's pretty hard to deal with."

Before leaving prison the last time, Bear had to wait six months to get the accommodation he now has with the Aboriginal drug and alcohol support service. The day he left prison, he initially had to stay at a boarding house.

The day of his release, Bear had \$50. The prison authorities advised him he would be able to cash his cheque of \$1300 at the bank. When Bear took a train and taxi to the bank, the teller told him the cheque would need three days to clear. Bear's bank account was with another bank and he was told he would need to set up an account with this bank. "So here I am in a boarding house with nothing. No clothes. I had only the clothes that I had on me, no bedding, nothing, and no money."

There was a young person at the boarding house who came out of prison the same day as Bear. He tested positive for drugs on the Friday. The young man offered Bear some drugs and Bear said no. "You're trying to keep away from it, I've done two years without it, and the first day in the boarding house there it is, right there in front of you."

Bear is now trying to get a house to live in so that he can have his children live with him. Six years ago, Bear lost his oldest daughter, who died from a drug overdose at the age of 30. She was admitted to hospital and Bear made the decision to turn off the life support for her. Bear has experienced significant grief in his life and feels he doesn't have anyone to talk to.

Bear feels depressed about how long it is taking to get housing. He got a letter back from the NDIS that he wasn't eligible. Bear continues to hit brick walls in his sleep, even though he is now out of prison.

Bear's story is imbued with a sense of sadness and loneliness. His engagement with illicit drugs was a mechanism of self-medication and a means to overcome trauma in his life. His time inside prison appears to have served to isolate him more from his family and significant changes to his current circumstances are needed for him to fulfil his dream of having his children with him again. The next section explores the challenges of leaving prison for other participants with disability.

4.4.5 Leaving prison

Participants with disability who shared their experiences of leaving prison often referred to poorly resourced and planned transitions. Michael, a man with psychosocial disability described having no money when he last left prison, "I got out with my wallet, my shorts, and a shirt, and that's it. Not even shoes on my feet... I had to wear the jail thongs around until I got some shoes." Jilly Jack reported that three out of the four times that her son Bill, a man with psychosocial disability had been released from prison, this had occurred without any medication or discharge sheet: "It just highlighted to me how Corrections really, they're only about getting their numbers and getting people in and doing all the reception and whatever else. They aren't necessarily there to support that pre-release and release." Jilly Jack reported that she has been the one to link her son Bill to NDIS supports when he left prison. She undertook research on a pre-release program for prisoners and sought to incorporate this program into Bill's NDIS plan.

Participants also relayed several difficulties in finding safe and secure housing, meeting financial costs of daily living, and keeping away from others who were engaging in criminal activity. Michael explained that housing in lodges and boarding houses were “fucking shit holes”:

The ones I’ve been to were disgusting. The [boarding house], when I got out to there in 2019, the last time I was there, before this time, got out to the [boarding house] and it was fucking putrid. I’m walking down the driveway to go to see where my room is and there’s needles in the garden.

At the time of being interviewed, Michael was staying at a lodge which he rated as “really good”, but also had “paper walls” where you could hear other residents.

Reggie, a man with a physical disability, also stayed in a boarding house when he left prison. “Every time I’d go to the toilet there’d be someone in there or it’d be real yuck on the toilet.” Reggie called the woman who owned the boarding house “Satan’s fucking mistress”. He said that she didn’t give people their bond back. “If you’ve just come out of jail you get put on the second-rate citizen, basically, yeah, and then you get breached.”

Reunification with family could be challenging for participants leaving prison. Michael had stayed with his parents several times in between prison sentences, but his mother and father eventually disallowed him from staying with them – “Just because it has never worked out in the past.” He had frequent experiences of struggling to pay rent at the places he stayed and to pay for food.

Both Bear and Michael had children they wanted to reconnect with and support. They both faced significant barriers related to obtaining stable accommodation, proving their capacity to parent, and showing they could abstain from further offending.

The experience of imprisonment could have lasting impact on participants. Jilly Jack expressed concerns about her son, Bill, and his social withdrawal. “I can’t get my son out of my house. He will go up to his room for quite a long period of time, take himself away from everything. So, they’ve set up a pattern of demotivating.” Reggie expressed considerable anxiety that he will return to prison. “I don’t want to die in there. I want to die out here in my way.”

The accounts from participants with disability who had been in prison have shown how life inside could be traumatising, at the same time highlighting how much responsive practices of correctional staff were critical to people’s survival. Unfortunately, the resourcing and practices inside corrective service facilities were inadequate to meet people’s needs, undermining the opportunity for successful rehabilitation. The next section briefly examines the experiences of people with disability on community-based sentencing orders.

4.5 People with disability and parole and probation

4.5.1 Following the requirements of community-based sentencing orders

Participants’ accounts of community-based sentencing orders were somewhat lacking in detail. There may be several explanations for this. Firstly, some participants did not refer to the type of order they had experienced, suggesting that the language used by authorities was not readily adopted by the person with disability. Secondly, if a person had been frequently in and out of prison, this could also mean they had several experiences of being on parole. Difficulties with recalling the chronology of events and specific interactions with parole officers could therefore affect the accuracy of some details.

Two participants with disability had to comply with good behaviour bonds. In both accounts it was apparent that the person needed additional support related to their disability which was not provided at the time. John, a man with intellectual disability was required to remain at the hostel where he was living. His brother, William, would often learn that John had been accessing the community and not complying with the order. John was a gregarious person who could not understand the gravity of disobeying the order. DT, an Aboriginal man with cerebral palsy, was issued with a good behaviour bond after engaging in a domestic disturbance with his father. In comparison to John, he was able to follow conditions more readily. “So, I had to very well keep a low profile, but in the back of my mind I thought, “Oh, I’m going to stuff up, I’m going to stuff up, I’m going to stuff up.” But it was very much, “Okay, I need to address my feelings and emotions and avoid getting in trouble.”” At the time of the order, DT was developing undiagnosed symptoms of suicidal ideation, anxiety and depression, and it was not until six years later he was able to receive disability support through the NDIS.

Another participant, Junior, an Aboriginal man with ADHD and Aspergers spoke of difficulties complying with an order, but it was unclear from his accounts the type of order. Junior was required to stay with his father, but received an offer from a woman friend to be his “carer”. When Junior stayed with the woman he ended up threatening her with a knife. Junior was subsequently taken to the watch house by police.

Michael, a man with psychosocial disability and a drug addiction was frequently on parole and shared that he often returned back to prison because he had breached his order:

So then I had strict bail conditions, right. And so, in that time, I went down to [city], took off down to [city], lived down there, become a heroin addict for about six months... so I go over in this toilet in [city], on [street], [street], corner of [street] and [street], in this hostel toilet, and she ripped out this brown powder on and I'm like, “What's that? Hey, wait up? What's going on here? What's this shit?” She said, “Oh, it's heroin.” She's gone, “Oh, you thought gear, you thought I meant fucking speed or ice or whatever.” And she goes, “No, gear down here is heroin.” And I said, “Oh, shit really. Fuck.” So anyway, I said, “No look, I'll try a little bit.” Tried it and loved it. The next day I want more and more, and that was it then.

Parole was largely ineffective for Michael, who was struggling to overcome his addiction, living in hostels upon release from prison and associating with others who had similar addictions. Seeking support from community services was difficult:

I got so bad I even went for help to the hospital, walked into the emergency section, or part of it, and just told him, “Look, I'm not in a good way and I need some help. I need to go to a detox thing or whatever,” and they said, “Oh no, we don't have that here.” But there is something there like that. There fucking is, I know now. They turned me away.

This rejection at the time affected Michael's mental health and he felt suicidal. His frequent return to prison due to sanctions and the poor options for housing in the community acted as a disincentive to apply for parole. In one stay in prison Michael reported “I didn't bother trying to get back out. Because it's hard when you don't have anywhere to live, to get out.”

Reggie, a man with physical disability had some conditions he needed to comply with after being released from prison. He expressed frustration that he was not allowed to go to certain locations related to his domestic violence charge:

But anywhere I go now, I've got to get permission from the coppers to live somewhere. And so I get pulled up randomly. And I said, “Right. Watch this. Did I rob a bank today? Fuck youse.” You know what I mean? And then they go, “We need to take your photo for update.” I said, “Update? How many times do you want to take my photo?” I said, “Are youse perving on me?” I said, “Fuck, how many times do you want my photo? I haven't changed that much.”

Reggie felt that the level of surveillance was excessive, and it appeared to remind him about the domestic violence charge he felt he had been wrongly accused of.

4.5.2 Participants' perspectives on support

There were mixed views on support from participants with disability who were on parole and probation orders. Bernadette, whose son, Justin, a man with Aspergers, was placed on probation with no conviction recorded, described the community corrections officers as “lovely”. Although there were some delays in passing on information from the court to the officers, the officers were able to liaise with community corrections officers in Western Australia, to enable Justin to return to his employment interstate.

Michael also reported a positive relationship with his parole officer. “She's said to me, “Always just be honest with me, upfront,” because she doesn't want to see me just go back to jail for stuff all, especially if she knows that I'm not doing crime.” Michael was aware of parole officers who focused on harm minimisation practices: “When guys now, they will let them, they will manage their use, and they just don't want to see it spike. They know it's going to be dirty every time, they'll test them every week, but they just want to see their levels drop, drop, drop.”

Conversely, Jilly Jack expressed frustration with community corrections officers. She has attended appointments with her son, Bill, a man with psychosocial disability, to find out what they were doing. “And I said, “So, are you not going to perhaps suggest that he participates in groups or he participates in some sort of a counselling session or programs?” “Well, he doesn’t have to if he doesn’t want to.” And I thought, “Well, this is useless, isn’t it?”” She felt probation and parole practice was not sufficiently evidence-based, “that people are being paid money to tick and flick”, and that expectations were unrealistic for people who have not had appropriate support on the inside to transfer relevant skills to the community.

4.6 Information sharing

4.6.1 The importance of information gathering and exchange

The final theme covered in interviews with both people with disability and family members concerned their thoughts on the gathering and sharing of personal information about people with disability between CJS agencies. People with disability were generally not forthcoming in discussing this topic. This may have been related to their level of comfort in discussing their disability, or they may not have fully understood how information was passed on between agencies and for what purpose. People with disability may have also not been aware of the potential benefits or consequences in sharing personal information between CJS agencies. It is also important to note that both people with disability and family members spent considerable time and emotional energy explaining their personal stories of the CJS, so that by the time questions were asked about information sharing, many participants were ready to complete the interview.

Overall, family members appeared more concerned than people with disability about what information was gathered by CJS authorities. In terms of information exchange between agencies, little was said, with more emphasis on the importance of sharing information with family members as to what was asked of and what decisions were made in relation to their relative with disability. Some family members were actively involved in advocating for their relative with disability, ensuring that appropriate information about their disability and supports were examined and considered by CJS authorities. Despite these efforts, discussing this topic appeared to trigger feelings of powerlessness to assist their loved one with disability to navigate the CJS. For example, William expressed anxiety about what questions were asked by police of his brother John with intellectual disability, who was interviewed without a support person present. William explained that John did not understand the meaning of the word “rape”, the crime he was alleged to have committed. Jilly Jack also expressed concerns about information taken in police interviews. She remarked “(a) I wouldn’t know what type of information they were extracting from him [son Bill, man with psychosocial disability], and (b) I don’t know what they do with that information. That’s never been said to me. I mean, sometimes now they don’t even give me the paperwork.”

LS, mother of IB, a First Nations Australian man with intellectual disability, emphasised that CJS authorities should seek important contextual information about the person, including culturally sensitive assessments about the person’s disability, and contextual information about the family:

Soon as they get charged, they should be investigating, why is this person like this? If it’s a recurrent thing, they should be saying, “Well, there’s got to be something in their background that caused them to do this.” ... Because there’s got to be something there to do with the family. The family most probably don’t like it, but if they’re open like me and just sometime they get sick of it, talk to them and say, “Well, this is what happened. This is what happened.”

Bernadette, mother of Justin, also stressed the need for proper diagnostic tools to be used to ascertain conditions such as autism, as well as establishing a register of people with autism.

4.6.2 Issues to consider in gathering information

Several key issues were raised by participants with lived experience in gathering personal information in the CJS. These related to ensuring consent and confidentiality, and the ability for authorities to weigh up the accuracy of information, particularly when a person with psychosocial disability is mentally unwell, or a person with intellectual disability lacks understanding of what is being asked of them.

Michael, a man with psychosocial disability felt it was important to gain his consent about sharing personal information and wanted to know when his parole officer would be talking to other agencies and what she would be talking to them about. There were many aspects of his life he regarded as “private”, and some things he would only share with his lawyer.

William, brother of John, a man with intellectual disability felt that serious consideration should be given to withholding the names of people with disability who go to court because of the effect it can have on the person living in their community. He cited an example when his brother disclosed to others about his impending court case where he was charged with rape. John was subsequently evicted from a supported independent living arrangement when others became aware of the charge. While this outcome was a result of what John had shared, it shows how the stigma of being charged with sexual offences can have devastating impact on the essential supports provided to a person with disability.

With regards to accuracy of information, Jilly Jack, mother of Bill, a man with bipolar disorder, said care needs to be taken when gathering information from her son:

I know Bill's head plays games with him. He's said some things to me at times where I'm really shocked and I go, "Is this Bill's head playing with him?" Because he spends a lot of time in TV, and TV can really impact on his mind. And so, I'm often having to weigh up what might be true and what might be distortion... And so, for me, my son's capacity can change quite a bit. And if they're [police] just getting it out at one point in time then bang, charging, that's it, bang, into remand, that's it. And when I've tried to ring up to find out and they'll say to me, "He's in the best place." That's it. So like, "Oh my god." Well, don't get me started.

This concludes the findings from participants with lived experience of disability and the CJS. While the experiences reported here offer the perspective of the CJS from a select number of people, the accounts highlight the lasting impact CJS involvement has on people with disability and their families. The researchers have sought to convey participants' authentic voice throughout the data with the hope to raise awareness of what people with disability have found helpful and challenging within the Queensland CJS.

The next section relays the findings from practitioners who have supported people with disability in contact with the Queensland CJS, and professionals who have overseen programs and services which have involved this group of people with disability.

5. Findings from practitioners and professionals

5.1 Nature of disability

Practitioners and professionals described the nature of their clients as largely people with cognitive impairments associated with labels such as intellectual disability, acquired brain injury, and autism spectrum disorder. Most noted a much higher proportion of men in their services compared with lower numbers of women. Clients had commonly co-occurring psychosocial disability and physical or sensory disability, ADHD and/or chronic poor health often associated with substance misuse. For a significant proportion, disability was not formally diagnosed at the time of service or CJS contact, and for some, diagnosis occurred for the first time as a result of contact with the agency. According to participants, clients presented with varying levels of self-recognition or self-identification with a disability label, and for those who are aware of their disability diagnosis, “some people are reluctant to disclose anything once in the CJS”.

Early life disadvantage and experiences of violence and abuse were common to virtually all clients, with many having prior contact with the child safety and youth justice systems. Some practitioners and professionals recognised the presence of complex trauma in their client group, with one noting a gendered difference where there is “high rates of extremely traumatised women who can have trauma-based disorders”. First Nations Australian practitioners in FNQ identified “a lot of undiagnosed disabilities” within the larger group of First Nations people they support, with one highlighting that “Aboriginal mob are inclusive and don't commonly identify intellectual disability”. Of those First Nations Australian defendants who are diagnosed, cognitive impairments (especially FASD) and mental health problems were seen as most prevalent.

5.2 Factors in CJS contact

5.2.1 Disability and trauma

Factors that professionals and practitioners perceived to bring their clients into contact with the CJS include those associated with trauma where some clients were considered to be “self-medicating with drugs and alcohol” where “it’s a slippery slope to offending”. Problematic substance use was commonly identified by professionals and practitioners as a factor in CJS contact, where drug possession or alcohol related offences were most common. Others identified the impact of the impairments people experienced such as “decision-making/problem solving capacity”, “not understanding what they did was wrong” or “challenges with linking actions to consequences” as underlying their clients’ contact with the CJS. Many practitioners and professionals identified behavioural issues such as “managing high impulsivity” and “anti-social or escalated behaviour in response to conflict or challenge” as commonly leading clients in to contact with the CJS. Others identified “previous negative experiences with authority (child safety, courts, incarceration)” which results in people having “distrust for authority, coupled with then sometimes difficulties in communicating effectively in those environments” as potentially escalating the nature of CJS contact. Others cited “fear of not knowing what to say” or “being concerned with intimidation by others” leading to people “agreeing or saying they are guilty” as leading to escalating CJS contact.

Trauma, or more specifically “unresolved trauma”, was identified as playing a “massive role” in bringing First Nations Australians with disability into contact with the CJS. Without access to healing and support, members of this group frequently “self-medicate” and are criminalised for “behaviours which [are] the consequence of trauma”.

5.2.2 Victim/offender overlap

A vast majority of practitioners and professionals raised the issue of the impact and recognition of “common and often life-long” experiences of victimisation experienced by their clients with disability where for “people going through the CJS as a perpetrator, for people with a disability, often they’ve also been victims of crime”. Recognition of this victim/offender overlap is regarded by many professionals and practitioners as detrimental to the just treatment of many people with disability in relation to for example matters relating to domestic violence or assault where there is a perception that ‘police overlook or don’t believe the victimisation but instead charge the person’. Several noted the intensified impact of this for the women with disability in contact with their services, with one observing that “police tend not to believe very vulnerable women” and as a result “women don’t trust police and so do not report victimisation”.

5.2.3 Multiple disadvantage

A number of professionals and practitioners cited a lack of resources (financial, material, personal) as leading to “crimes of necessity or survival” which were understood to lead to a cycle of criminalisation. Minor offences may escalate, for example, “they get caught for a petty crime of not paying for their train ticket which then results in an escalation which then leads to charges of assault”. Similarly, the lack of stable housing and high incidence of homelessness (often due to exposure to domestic or sexual violence), where people may have “nowhere safe or stable to live” or “live on the streets”, makes them more publicly visible and so more prone to contact with the CJS. First Nations Australian practitioners identified racism, poverty, the criminalisation of disability-related behaviours, and a lack of social services, particularly housing for First Nations Australians with “complex needs”, as additional key drivers.

Poor social connectedness, few formal and informal and family supports and social isolation appeared characteristic of the client group described and was understood by some professionals and practitioners to precipitate contact with the CJS. For some clients, their “vulnerability to being exploited by others”, “coercion by others”, “getting taken advantage of by someone significant in their life” or “stealing something for someone else and not understanding the consequences” was seen as a significant factor. Others observed the influence of “lack of meaningful use of time” or “a meaningful role in the community” as contributing factors to CJS contact. Some professionals and practitioners noted that “difficulties engaging with mainstream systems and with mainstream society more generally” as an underlying driver of CJS contact, with one noting that “once people are in contact, they find it hard to get out of the system”. One practitioner provided an example of the

impact of having limited or no natural supports in the community on a person with disability breaching police protection orders (for example domestic violence orders) when “the person doesn’t understand detail and so can’t comply with, for example, signing in at a police station”.

First Nations Australian practitioners seeking to establish a “safety net” for Aboriginal and Torres Strait Islander people with disability exiting prison, particularly noted a distinct absence of supported accommodation. Rather, members of this group are “getting released straight to homelessness”, making it near impossible to avoid returning to prison. It was noted that most of the existing housing services refused to accept “anyone from the prison”. As one practitioner noted, members of this group, especially those with complex support needs are all too frequently “put into the too hard basket”.

5.2.4 Compounding minor offences

As captured in the examples above, professionals and practitioners identified the nature of offences associated with their clients’ CJS contact as predominantly low level or summary offences including, for example, public nuisance, common assault, stealing, low level drug offences, and unpaid fines. Many experienced the compounding of offences associated with failure to comply with orders or breaching of bail conditions. A smaller proportion of the client base were those on forensic disability orders who had been deemed unfit to stand trial and those with more serious offences. First Nations Australian practitioners agreed that the most common offences for Aboriginal and Torres Strait Islander people with disability were public nuisance, followed by domestic/family violence.

Taken together, the views of practitioners and professionals, in considering the factors they perceive to bring their clients with disability into contact with the CJS, indicate a complex interconnection between early life disadvantage, histories of violence, abuse and victimisation, material and circumstantial disadvantage, early and ongoing enmeshment in the CJS, substance use issues and social marginalisation. These interact with and are shaped by the nature of cognitive and psychosocial disability and complex trauma. In addition, the impacts of these interconnected factors are intensified for women and for First Nations Australians. One practitioner summed up the sentiment of many thus:

The compounding effects of impairments, substance use, unstable housing, lack of regular income, poor access to health services and a reluctance to engage with services leads to a cycle of offending in the absence of addressing any of these issues.

5.3 People with disability and the police service

5.3.1 Escalation in interactions

Professionals and practitioners identified a number of difficulties that commonly arise in police interactions, with their clients, particularly the tendency, or what one practitioner described as the “ubiquity” of escalation in the seriousness of interactions. What police may identify as “non-compliance”, may be associated with fear of police due to previous intimidation or targeting or other negative experiences, or having distrust for authority, coupled with difficulties in communicating effectively, and the “overly aggressive, antagonistic, or hostile” nature of police responses. Practitioners acknowledged that this escalation can occur “in the community, in service contexts or in police interviewing”. Sometimes, a welfare check or call out for a minor misdemeanour ends in escalation to more serious charges. A common scenario provided regards the escalation of public nuisance call outs. “Police can be too heavy-handed and the person reacts out of proportion – resulting in charges of assault of police. There can be additional escalation once the person is taken into police custody which also leads to additional charges”. Similarly, the act of “support seeking” for those unconnected with services may be criminalised, such as “a person with disability calling police or ambulance when in distress resulting in charges related to drug possession”. Conversely, “people with disability in domestic violence relationships who have a constant police presence in their lives” can in turn be vulnerable to increased police scrutiny of other potential offences. Several practitioners noted the complexity of police interaction in disability supported independent living where the intervention or involvement of onsite support workers unfamiliar with criminal justice processes may compromise the rights of the person, “particularly those under Guardianship”.

5.3.2 Police targeting

First Nations Australian practitioners in this study were unequivocal that police harassment and targeting of Aboriginal and Torres Strait Islander people with a disability is a critical factor driving the over-representation of members of this group. Practitioners conveyed that the First Nations Australians with disability who they support report that the “coppers just hammer us”. Racism and stigmatisation by police were seen by participants in the study as endemic in FNQ. Several other professionals and practitioners indicated their overall impression that people with disability who are well known to police are deliberately targeted – “once you are in the eye of police you never get out”.

5.3.3 Recognising and responding to disability

Once in police custody there were concerns that police commonly either fail to recognise the presence of disability or “reject or disregard” the possibility that disability is present. This results in failure to “adequately inform a person about their rights” and/or to call a support person. The lack of availability of support people or appropriately skilled interpreters can also have harmful impacts for people in contact with police, for example “using big words and language that people don’t understand which impact on how interactions with police are experienced, that is, fear”. Professionals and practitioners observed that the presence of a support person can mediate these negative outcomes and result in better safeguarding of the person’s rights. The support person can model “more appropriate and supportive ways to communicate with the person with disability”. For example, “when called to a critical incident, the support person can demonstrate to police how to engage with the person, deescalate and support the person to safety”. Support people also have the capability to provide a context or background of a client’s experience. For instance, they can “provide information about services the person is connected to” and thereby “demonstrate lower public risk or chance of either reoffending or further escalation”. Additionally, positive outcomes were reported by those who act as support people when they were able to develop a relationship with key personnel at the police stations to which they are called to support a person with disability. Professionals and practitioners agreed that police “can be very responsive” in these instances. The availability of accessible information in the form of Easy Read resources and scripts for use by police in explaining what is happening once in police custody is also seen as beneficial.

Participants observed that while police may be aware of disability, and may take a more discretionary approach, they may still be bound by law to deal with an offence committed by the person. One practitioner provided an example where a person with disability in distress may utilise police interaction for the purpose of “having someone to turn to” where, in the absence of other services or supports, “I’m just going to go up to a police officer and get myself locked up because I need a break from everything”. Alternatively, there may be “pressure from a victim” – and so “sometimes police hands are tied”.

Overall, there was strong agreement that diversion to other services to address and support people with disability is preferable to “charging them as an intervention”. There was a common perception that police require a “more effective mechanism for identifying people with a disability early in the stages of being apprehended”, including skills in “differentiating mental health or cognitive impairment-related behaviour from intoxication” and in police interview techniques. This early intervention approach can obviate a commonly arising situation where, “by the time the person gets to court the failure of police to identify means that early intervention options, diversionary options or police investigating alternatives have already passed, and so having charges dismissed or diversion from the CJS is more difficult”.

5.3.4 Responding to risk

Several professionals and practitioners acknowledged that police may have a “risk management focus in interactions” which may “inadvertently trigger or escalate the person’s behaviour in the course of doing their job” and that they “have a difficult role in differentiating mental health or cognitive impairment related behaviour from intoxication and so often deal with people under misconceptions about their behaviour”. Some suggested that a more effective approach could be premised on a “greater understanding of trauma-informed practice” and be informed by “a proper understanding of cognitive impairments”. One practitioner went so far as to call for a “reframe of the police lens to include consideration that disability may be present in the first instance in all interactions”.

While many practitioners and professionals acknowledged the need for better training in general for police in relation to understanding of the functional impacts of cognitive and/or psychosocial disability, for example where a person may appear outwardly independent, but in practice may experience difficulty with decision-making or understanding and communicating, One participant noted that “it’s easy to say that there should be more education of police and other people about intellectual disability. It’s really hard to see how that would happen effectively”. One suggested an alternative or addition to any training approach concerned increased individualised scrutiny and accountability where “every time a police officer charges a person and it turns out that the person was either of unsound mind or unfit for trial, they should get training about what happened, what went wrong, what could we do better?”.

One practitioner in a regional area noted that the presence of a designated police liaison officer in their local area was very beneficial for people with disability and their families in that:

...some families have identified upfront to the liaison officer their son or daughter, some of the issues that they have, and that liaison officer has been able to communicate that to the police, or at least somehow raise the awareness that they might come across this person in their journeys.

Many professionals and practitioners expressed support for an alternative to policing for their clients, with one acknowledging that:

...police can't be across all of these different areas. They can't be mental health professionals, DV professionals, they can't do all these jobs effectively Their main role is to keep people safe. But, in essence, they're making people feel unsafe.

Several practitioners commended co-responder models as suitable alternatives,, with key suggestions for the form of such a model including a co-responder who “is a social worker or someone who has more of that generalised ability to regulate, to notice risk, assess risk, put in safety plans and prevent some of that tertiary level response”.

Taken together, the views expressed by professionals and practitioners indicate significant concern with many common police practices in interactions with people with disability. One professional in fact identified interacting with the police as the “most dangerous time” for their clients. Challenges include making room in traditional policing models for trauma and disability informed approaches in recognition of the complex and compounding histories of disadvantage, violence and impairment that are common to this group, in particular in order to avoid what many see at the inevitability of escalation in seriousness and ongoing enmeshment in the CJS. The development of alternate or co-responder model was identified as an additional solution. Promising and positive practices identified by professionals and practitioners centre on increased police knowledge, awareness and capability to adapt practices to take account of disability and in particular the use (although not currently widespread) of independent support people who can support the person in their interactions in police procedures.

5.4 People with disability and the courts and legal system

Professionals and practitioners provided a range of different supports to people with disability in navigating courts and legal processes with Magistrates and District courts and with legal representative personnel. This included providing support letters “to explain support needs and functional impacts of disability”, advocating for no conviction (where possible), assisting the person to understand the court process, supporting people in the process of consulting with legal representatives and ensuring duty lawyers had knowledge of the impact of the person’s disability both on their alleged offending and on their interactions with the person. This included “allowing extra time, breaking information into understandable chunks, simplifying their communication and concretising things where possible”. In supporting people in this context, one practitioner noted the particular challenge of time pressures in assisting the person to “process information and understand consequences and make decisions when they haven’t fully been able to process that information and understand consequences”. Some practitioners also attended court with the person, managing the person’s expectations and capacity to “wait for anywhere up to six or seven hours that it may take”. Others were involved in working in partnership with community agencies to deliver legal services and generally to assist people navigate the legal/court system.

5.4.1 Inaccessible processes

Professionals and practitioners identified the inherent inaccessibility of the legal and court system for many of their clients who “do not know how to engage in court or legal process, do not know what their charges are or how they should plead”. In addition, “in the absence of awareness by court personnel of trauma informed practice” the experience of “being talked about by a judge, prosecutor and lawyer in court in front of them can be very triggering for people”. There is a dearth of Easy Read information available to provide information to people in a way which may be accessible and if available these should address both “court process and scheduling”. There was a perception by some professionals and practitioners that courts and legal representatives are under “significant pressure of numbers” which has implications for “safe and proper legal process”. Others identified the “adversarial and punishment approach enshrined in legal/court processes” as ill-suited to just outcomes for clients with disability. Courts were observed to have “little time for support” and “don’t have a focus on rehabilitation, just sentencing and probation”. This means that important contextual and explanatory factors contributing to a person’s behaviour which precipitates their involvement with the CJS are not addressed, and so “every day the courts are punishing people with disability for the consequences of their disability”.

5.4.2 Limited capacity and supports

There was a commonly expressed concern amongst professionals and practitioners regarding the level of legal representation available to people with disability, including observations that “Legal Aid is overwhelmed”. “Significant concerns” were raised by First Nations Australian practitioners about the “level of ability” of legal representation provided by some lawyers working in FNQ. These “really poor levels of representation” are seen as especially problematic for Aboriginal and Torres Strait Islander people with disability, where generally lawyers were not “challenging many of the charges, including many of the policing practices”. Indeed, many lawyers were not “challenging matters that it seems they lawfully and legitimately and ethically should challenge”. A lack of training was seen as critical in driving this culture of “incompetency”. Specific training was seen as necessary for lawyers working in these contexts.

The availability of specialist support services/persons was seen to be a strong protective factor for timely and quality legal and court outcomes. These services can provide support and modelling for good communication practice with legal representatives, but restricted resourcing for these services was noted.

Gaining access to assessment for people who have undiagnosed cognitive impairment or a mental health condition for the purpose of court processes can take a long time once in the CJS due to “the lack of appropriately trained psychiatrists and psychologists”, especially for those in regional areas and for those already in detention in these areas. This means that these people can spend lengthy periods of time “languishing in prison without getting any support”.

In the event that support professionals are involved, many indicated the importance of their providing “support letters for courts which outline disability support needs and speak to the person’s trauma as well” and which can provide useful context about the types of supports provided to a person. Conversely, concern was expressed by one professional regarding “the reluctance of sentencing judges to take into account mediating factors that are often set out in support professionals’ reports or using information in them against the person”.

5.4.3 Cultural appropriateness

In relation to legal representation and court outcomes for First Nations Australians with disability, participants noted the almost complete absence of culturally appropriate neuropsychological/cognitive assessments in court proceedings, the propensity of courts to refuse bail for this group, a lack of “understanding and consideration of cultural law and its impact” and limited support for First Nations Australian community justice groups. Experienced practitioners in this area noted the importance of alternative approaches to taking legal instruction from First Nations Australians with disability which “avoids legalistic terms” and instead is in the form of a “conversation or yarn with people”.

5.4.4 Impact of orders

Several practitioners provided their perceptions of issues regarding people under forensic disability or other treatment orders³, with some indicating that:

a minority of people who are on orders are accepting of it, they're grateful for the support, they don't see it as an impediment to their daily life, and they would continue to engage even if it wasn't ordered. And for those people, it provides support, it's rehabilitative.

Others however expressed a number of concerns with clients "wishing that they weren't on those orders and that they had been able to proceed through the CJS. So while the intention is rehabilitative, people experience them as punitive". Concerns centred primarily on "there being no end date to a forensic order or a treatment support order" and around continuity and timeliness of the legal process. For example, frequent changes in case management and treating personnel was seen to result in a great deal of difficulty developing rapport and ensuring continuity of care. This means the lack of consistent observation and assessment may delay the provision of expert evidence of treating teams and psychiatrists. In such situations the legal process can be delayed, leading to the person spending excessive time in detention. Indeed, some participants suggested that "overall there may be hesitancy by legal personnel to go down the diversion track because of the strong possibility of extended time in detention, waiting".

Many practitioners and professionals expressed concern regarding the difficulty of having forensic orders removed and spoke of the potentially long-term negative effects of remaining on orders, where people with disability may be "effectively imprisoned in the community". One practitioner provided a stark example of the impact of this issue:

We recently had a gentleman who did his time 11 years ago, and he's still on the same forensic order 11 years down the line. He's got a disability. And basically, in his home, he might as well be in prison because he can't leave the home alone, he can't have a phone with pictures, he can't have internet, he can't have that. We kind of said, "Well, we need to phase this off. It's 11 years gone with no other crime. This was his first crime. We need to start giving him his life back."

Taken together the views expressed by professionals and practitioners about the capacity of the courts and legal process to accommodate and consider the support needs and issues affecting people with disability indicate that there are significant difficulties with accessibility, appropriateness, and system capacity. While there is evidence of pockets of appropriate support provided for people with disability in their interactions with the courts/legal system, practitioners and professionals point to difficulties with the capacity for timeliness, processes for recognising and responding to disability and associated support needs and the rigidity of specialist diversion programs such as forensic disability orders which, because they are based on a mental health model, are not appropriately designed to address the different needs of people with disability.

5.5 People with disability and the prison system

Professionals and practitioners were engaged in a range of support provision for people with disability in prison including advocacy for people or providing support and services in prison (including health and mental health care and NDIS access, and ensuring aids and medications are available), assisting with parole applications, and contributing to post-release planning. Some practitioners and professional believed that "many people with disability don't know why they are in prison" and there was a generally held view that "prison is not the right place for them". First Nations Australian practitioners described the "prison culture" in FNQ that sees "a

³ Forensic Orders are made by the Mental Health Court if the Court finds a person is of unsound mind at the time of an alleged offence or is unfit for trial. The court makes a Forensic Order if it considers the Order is necessary to protect the safety of the community. Specifically Forensic Order (Mental Health) is made if the person's unsoundness of mind or unfitness for trial is due to a mental condition other than an intellectual disability, or if the person has a dual disability (a mental illness and an intellectual disability) and needs involuntary treatment and care for mental illness as well as care for the person's intellectual disability. A Forensic Order (Disability) is made if the person's unsoundness of mind or unfitness for trial is due to an intellectual disability and the person needs care for the person's intellectual disability but does not need treatment and care for mental illness. A Treatment Support Order can be made by the Mental Health Court following a finding that a person was of unsound mind at the time of an alleged offence or is unfit for trial. The court makes the order if it considers that a Treatment Support Order, not a Forensic Order, is necessary to protect the safety of the community. (https://www.health.qld.gov.au/__data/assets/pdf_file/0036/629748/pg_fo_tso_amendment.pdf)

lot of Aboriginal and Torres Strait Islanders” refused bail as “shocking”. Relatedly, these practitioners described a repeated pattern in FNQ that sees “people spend longer on remand in custody than they would ultimately be sentenced”.

5.5.1 Vulnerabilities in prison

There was a concern that vulnerable prisoners with disability “get targeted and they get shifted from unit to unit to unit to unit” and as one professional observed, “it’s certainly more challenging for some individuals with disability to be able to raise awareness of that and discuss those matters with staff.” The often-long lead time from arrest to reception in prison can also mean that a person can be without medication for long periods, which can in turn affect their behaviour. Multiple professionals and practitioners noted that because corrections staff are “not trained for managing behaviour associated with cognitive disability or mental health conditions, it is punished” and that there are challenges within the corrections system to meeting complex physical care and personal hygiene, where “it’s not really within the scope or the role of anyone to provide” and so there may be “reluctance on the part of corrections staff” to recognise or assume any additional responsibility for the needs of people with disability in prison. There was also recognition that “people with disability often spend longer in custody than they need to for a number of reasons including “lashing out” behaviour which reflects poorly on them for the parole board, or otherwise “difficulty retaining information, submitting the forms and meeting the criteria” and overall “having limited access to support to apply for parole”.

5.5.2 Identification and assessment

The issue of identification or under-identification of disability in prison was discussed by many professionals and practitioners, who raised concerns related to “safer admissions to custody”, particularly the lack of screening and assessment on entry into prison. Participants called for routine assessment on admission to prison which focuses on functional capacity assessment rather than diagnostic assessment, in order to identify a person’s support needs rather than their diagnosis. Several professionals indicated that the current approach of utilising the HASI does not provide a sufficient screening mechanism for the complexity of the population (for instance “it does not screen for brain injury or other types of cognitive impairment”) and even if the HASI indicates a “possible intellectual disability, there is limited capacity to do confirmatory testing”. Significantly, several professionals noted that there is “no culturally appropriate tool to identify cognitive disability in First Nations Australians in the corrections system”. Positive practice was noted by several practitioners as:

dependent on what the capacity of the centre currently is in terms of their staffing and also their knowledge. Some centres are really good at identifying and doing assessments within their teams for people with suspected disabilities, particularly around possible intellectual impairments.

Other centres may “rely on custodial officers to provide observations that can assist in identifying people who may need support such as behaviours of concern, issues with self-care, or difficulty following directions”.

Diagnostic assessments were considered crucial to establish NDIS eligibility and where practitioners were able to establish pre-release referrals or engage an NDIS support coordinator pre-release, (which were noted as “pretty uncommon” or involved “long timeframes”) this worked well. One professional highlighted recent improvement in access to assessment of psychosocial disability in which “Queensland Health and the Prison Mental Health Service provide an in-reach service and if the psychosocial disability meets their criteria, then they can write that supporting evidence and then that’s been really, really helpful for NDIS”. Several practitioners observed that people with disability may themselves be reluctant to disclose their disability for a range of reasons relating to confidentiality, their potential vulnerability, and the risks of placement in a safety unit or detention unit which, because of the solitary nature of confinement in these locations, is regarded by many as potentially “exacerbating distress” and seen as “a very negative rather than a protective or safe experience”. One professional highlighted that the more recent move to “more individual management of prisoners” and the introduction of the “Prisoner of Concern” process in corrections has seen “improvements around recognising detrimental impacts of isolation on individuals”.

5.5.3 Supports in prison

Practitioners and professionals identified a number of factors that impact on the provision of care and support to people with disability while in prison and some felt that lack of attention to these amounts to a “distinct lack of duty of care”. Several noted improvements that have occurred as a result of the implementation of dedicated disability specialist staff in some corrective service facilities, however concern was expressed with the lack of commitment to the ongoing funding of these positions. The short timeframes that many people are in custody also makes it challenging to put supports in place. Challenges ranged from lack of accessible facilities for people with physical disability, lack of timely assessment and mental health care (particularly access to medications), difficulty experienced by support services in obtaining access to inmates in safety units or detention units, and overall difficulty in achieving any adjustments for those with physical, sensory or other disability. The lack of accessibility and appropriate design of skills development programs in prison that take account of cognitive access needs was identified by several practitioners, although one professional noted the recent introduction of a sexual offending program in one area “which aligns with the mainstream program but it’s a completely different format, completely different design for people with intellectual impairments.” Both the “shortage of” and “inappropriateness of cultural liaison officers in prison being in uniform” was noted as an issue for First Nations Australians with disability in prison. An example of positive practice in corrections was cited by one professional where “Blue Knot Foundation and Tracy Westerman (a recognised expert in culturally-appropriate psychological approaches) have been engaged to build cultural and trauma-informed competencies in staff” in one area.

The NDIS was regarded by some practitioners as “difficult to engage” while a person is in custody, and in particular the specific consent process required for practitioners to assist in NDIS applications was reported to be “not in line with existing forms of consent for other services”. Others noted that gaining consent to act on behalf of individual prisoners and share important information for NDIS applications was difficult when there were “concerns with issues of capacity”. Professionals who had concerns regarding capacity for consent of people in custody further highlighted a similar concern that “applications for guardianship do not occur while a person is in custody” and so “it’s really up to professional judgement or discretion”. The importance of “developing a good relationship with Justice Liaison Officers⁴” was noted by one professional “where they are able to coordinate supports, meet regularly – share information”. The “lack of funding available to outsource assessments” and ongoing secure funding for a “disability team” within corrections means there is significant pressure on existing assessment and referral teams to undertake the often-extensive work required to progress timely NDIS eligibility requests whilst people are in custody. One professional indicated that “NDIS or the NDIA will provide funding for any services or supports where there is no equivalent in custody” although was unable to provide any examples of where this has happened, but rather noted that “it’s not common, in my experience”.

Several practitioners and professionals commented on the practice in some prisons where in-prison carers are matched to vulnerable people in mainstream corrective services facilities. Concerns were expressed about the absence of safeguards and mechanisms for equality, safety, and oversight of the program and its appropriateness based on “the negative experience of carers and that it may make inmates with disability more vulnerable”. Specific concerns included its potential to promote:

stand over/intimidation and forced ‘buy-up’, the lack of confidentiality inherent in the program where there is a risk of the ‘carer’ disclosing conditions to others, and that the lack of training to perform physical support/manual handling or physically helping someone can put the ‘carer’ at risk.

5.5.4 Women with disability

Practitioners who worked with women with disability in prison identified the particular complexity of the needs of this group. The very high incidence of women who are victim/survivors of abuse and violence results in “widespread trauma” and psychosocial disability (both diagnosed and undiagnosed). Many women were observed to have “significant health issues” and had experienced homelessness prior to incarceration. Whilst in prison, women with disability are commonly placed in safety units because of their complex presentation

⁴ The role of Justice Liaison Officers were introduced by the NDIS in 2019 to provide a single point of contact for workers within state and territory justice systems to coordinate support for NDIS participants in youth and adult justice systems ([Disability Reform Council Update | NDIS](#)).

which one practitioner observed “are actually traumatising to women with disability – it exacerbates trauma and distress especially for the many who have experienced sexual abuse – from the close observation in these units (showering and hygiene)”. Practitioners also noted “difficulties gaining access to women in protection units”. For First Nations Australian women with disability, cultural issues will impact on their engagement with health and other services where “you just don’t talk about women’s business when a man’s present – male doctors are common in prison”.

Significant challenges of planning for release for this group were identified as related to the conditions of referral and access to services and supports that “cannot be activated until after they are released”. This includes for example “reapplying for the Disability Support Pension/Newstart, which can’t be activated until release, comes too late – they are often already in an unsafe/unstable place and so the whole cycle starts again” and “the lag in establishing secure accommodation....so the solution is often boarding houses which are not suitable or safe”. Several practitioners spoke of the way this can lead to “voluntary re-offending”, relating the experience of one client who sought a return to prison “because I have a roof over my head and they’ll feed me” and another who said “sometimes it’s easier to be in there than out here”. Others reported their clients’ difficulties in establishing appropriate supports on release such as stable income and safe housing makes “the process of women getting their children back very challenging”.

In sum the views expressed by professionals and practitioners indicate that people with disability remain at significant disadvantage and vulnerability within the prison system. A range of promising practices and innovations are evident in some areas, but overall capacity is constrained by a lack of resources, inconsistent or insufficient system-wide screening and underdevelopment of appropriate interventions and supports.

5.6 People with disability and parole and probation

Fewer professionals and practitioners interviewed for this research provided perspectives on the experiences of people with disability and probation and parole as compared with those who provided insights about police, courts and legal processes or prison. Those who did typically provided support for people with disability to report to probation and parole. Of those who did make comment, there was an almost universal perception that people with disability commonly struggle to understand or remember their probation and parole reporting requirements and therefore meet their responsibilities. The absence of support to do so regularly places them in jeopardy of breaching their orders and being re-incarcerated. Probation and parole were seen as particularly problematic for First Nations Australians with disability. Breaches of probation and parole orders for members of this group are a “massive” issue. As one First Nations Australian practitioner put it:

They come out on all these restrictions, and they give him a little slip to go to report. The fellas got nowhere to put that little slip anyway because he’s got no home, no watch, he’s got nowhere to live.

Accordingly, practitioners argued that probation and parole for members of First Nations Australians with disability should be eliminated in favour of more supportive and adapted community-based options.

5.6.1 Accommodating disability

There was a general perception that probation and parole services are focused on “keeping people out of jail” and “trying to help their people not to reoffend”. However, “knowledge and understanding of the impact of disability” in probation and parole personnel or “having limited or no training or understanding of trauma informed practice” can mean that contacts with the probation or parole can “inadvertently trigger or escalate a person’s behaviour” in the course of personnel in this area “doing their job”. One practitioner noted a particular difficulty with the spaces in which probation and parole meetings may be held and the importance of those personnel “recognising when a person is experiencing sensory overload in their offices and why that may occur”. Another practitioner recounted the experience of some of their clients “where they’ve been called into parole and they’ve said to the parole officer, “Is there anything to worry about?” The parole officer said, “No, no, I just need you to come in.” And then they’ve been taken out the back door by the police”. The “trauma from these experiences” can lead to “distress” and to low expectations that “a person will be transparent with a parole officer in the future”.

5.6.2 Supports for compliance

Good practice was identified as when probation personnel are able to recognise that attending a community corrections facility can be ‘triggering’ for ex-prisoners with disability. It was argued that flexibility in these arrangements was needed, noting that if a person engaged with supports provided by other community services, they would be more likely to “safely and fully meet their reporting requirements”. The types of supports offered by these services could include “explaining the nature of a person’s disability-related communication difficulties” and how these might be seen “in a person’s behaviour” or in helping the person to understand the nature and importance of “going in for a meeting where they kind of talk about nothing, it’s just like a tick box exercise, and is really challenging for them”. One practitioner suggested the value of education for probation and parole personnel in order that they be able to “take a health and welfare perspective rather than considering reporting requirements as only a criminal issue”. The Community Re-Entry Services Team (CREST) program available in some Queensland regions was commended as an appropriate model for people on parole who have potentially complex risks of re-offending such as those with cognitive disability.

5.7 Information sharing

5.7.1 Benefits and safeguards

On the whole the professionals and practitioners (including First Nations Australian practitioners) who commented on information sharing about people with disability within and beyond the CJS, were supportive of appropriate information sharing across all agencies. There was generally agreement that information sharing about an individual has the potential to benefit agencies within the CJS through “improved understanding of the persons they are trying to assist”, making it possible to “tailor their services and to provide appropriate training to their staff”. One identified significant benefit of information sharing for people with disability is the elimination of the need for them to “tell the same story over and over”. Another highlighted, that “for people in prison [who] are going to be released, information gathered could be used to establish proper services post-release, and also to indicate they did get some services while in prison”. At an aggregate level, one practitioner saw further benefits to organisations themselves where data may be used for “reviewing their own services and improving their services and training”. Several also noted the importance of data collection in aggregate or global form “to assist with policy development”. Another stressed that information sharing must come with “reciprocal responsibility” which enshrines “a commitment on both provision and use of information”.

There was a unified view that information should only be collected and shared with a person’s consent, and according to a person’s instruction. Safeguards should be in place to make sure that the person understands the information that is being shared, the purposes of it being shared, and how it is going to be used. “Without the individual’s consent, the information shouldn’t be gathered, held, or used”. There was recognition that some people will require a supported decision-making approach or may not be able to provide consent, and so guardian consent may be required. In addition, several practitioners raised the need for consideration of “standardised follow up around consent and information-sharing” to ensure that “consent is current”.

5.6.2 Unintended consequences

Professionals and practitioners identified confidentiality is an utmost concern and cited the potential unintended consequences of simply releasing a person’s information. One practitioner noted that “information is often used not to better a person’s outcome, but, in fact, to try and keep them square pegged” by, for example, police or courts, while another stressed that it can be “very hard for people to be considered apart from their history – it’s carried as a burden, with no recognition of the person having changed”. Another commented that “I know sometimes they [people with disability] feel very violated by what the agencies do know about them”. Several practitioners raised issues around the risk of clinical or case notes being “misused”, and others identified that “widespread unethical sharing of information is already happening - confidentiality doesn’t exist”. There was wide agreement that “information collected should only be gathered for a good reason - to support the person”. Some practitioners identified the need for caution when deciding what and how information should be shared, noting the fundamental right to privacy enshrined in Queensland’s Human Rights Act 2019, which in turn underpins legislation that governs mental health practice in Queensland (the Mental Health Act (Qld) 2016). For example, one practitioner raised concerns around the “risk of breaches of privacy/confidentiality in disability

support staff giving information to police". Overall professionals and practitioners were generally concerned with the "risks of any sharing when protocols and safety limits and responsibilities are not clear".

5.6.3 What should be shared

In relation to the information that should be shared between criminal justice agencies, there was a view amongst professionals and practitioners that this should be purposeful and relevant to the role of the agency, so rather than "simply the details of a diagnosis", the information should be framed around "the supports a person might require from that service".

Participants identified, from their various perspectives, a range of information that would be beneficial if gathered including:

- immediate risks of harm
- homelessness/housing status
- disability status (diagnosed/undiagnosed)
- how disability impacts on decision-making and communication
- cultural background
- history of victimisation through violence and exploitation, that is, whether the person has the dual identity as offender/victim
- whether or not someone is an NDIS participant on the assumption that criminal justice contact strongly indicates support needs that an NDIS plan should address
- the extent of a person's service history/referrals on the assumption that this indicates that the person has been "bouncing around" and has not had their support needs effectively identified and met;
- information specific to a person's care, treatment and support including
 - diagnosis and treatment plans (including Mental Health Plans)
 - which support professionals they are engaged with in the community
 - whether they are linked with an NDIS Support Coordinator
 - whether they are on the Disability Support Pension (DSP)
 - medications
 - aids and equipment needs
 - any specialist manual handling strategies
- release dates for those in prison (relevant particularly for Health and Mental Health services)
- probation and parole details – to ensure community support available to meet requirements.

One practitioner stressed the importance of capturing a person's wishes in relation to "what that person wants and what services they consider to provide assistance and support to them".

5.6.4 Challenges in information sharing

Professionals and practitioners identified several challenges associated with gathering and sharing information including the need to strike a balance between what is important and what could be misused. Several practitioners noted a current issue with agency reluctance to share information combined with a concern that, currently, "there is little transparency about how decisions are made regarding what is shared, and this often results in limited information sharing", impacting on the capacity of providers to plan appropriate supports. Differing Commonwealth and State jurisdictional requirements regarding information capture and sharing, particularly those related to the NDIA sharing information around existing NDIS participants was cited as a significant barrier to effective communication between agencies. One practitioner noted that:

...people who have been criminalised and who also have trauma histories, are protective of their information and who might know what about them and often experience a really strong motivation to control narratives and control information and to control who knows what.

5.6.5 Enabling mechanisms

Participants suggested a number of mechanisms that may enable agencies to safely and ethically share information and identified that protocols and responsibilities must be standardised. These include:

- legislative reform to align currently relevant acts
- jurisdictional and agency MOUs, agreements and protocols
- clear, shared and agreed metrics for agency decision making about information sharing (similar to the NDIS Support Coordinator model of information sharing)
- practical guidance on standards for the use of information supported by practice examples
- standardised consent from prisoners/service users for information exchange
- clear articulation in any service agreement and consent form as to
 - who are the points of contact,
 - who shares information,
 - what they share and
 - who can receive it
- a centralised data repository with proper safeguards to protect privacy and manage access
- an independent person who is responsible for coordinating and to “tie everything in” when coming into prison and post-release.

Overall, the views expressed by professionals and practitioners about information sharing supports the multiple benefits this can enable for individuals, services and policy makers. There are however significant concerns regarding the mechanisms for collection and the potential uses of information. Privacy, confidentiality, transparency and utility are commonly held concerns. There is explicit recognition that people with disability may require specific types of support for decision making when consenting to have their information shared.

5.7 Improving experiences and outcomes

In addition to providing perspectives on better approaches which are specific to particular agencies of the CJS canvassed in the sections above, professionals and practitioners provided insights related to the more general principles, practices and processes that they perceive to contribute to better outcomes in working with people with disability. These factors traversed interpersonal approaches to support as well as service and system responses.

5.7.1 Relational practice

Professionals and practitioners identified the nature of the support relationship as a key factor contributing to better outcomes for people and emphasised the importance of “relational practice” which is “person-centred, empowering for the client and strengths-based” and which “focuses on effective communication”. Characteristics that were seen to be protective and likely to be most effective include an emphasis on support relationships that are “ongoing” and which enable the person to “remain connected” so that “trust builds over time”, seen as especially important for “people with disability who have not been able to trust anyone in their lives”. There was recognition that this kind of engagement can be maximised where there is “one point of contact for the person” and with “continuity and consistency of support person across CJS settings”. This approach is akin to a system-wide relationally based case management approach.

Many practitioners recognised that effective relational support practice with people with disability “needs to be a lot more long-term, intensive and proactive”. This entails allowing for “time and adjusted responses”, including for example that “double the time be allowed” and “limited caseloads to actually allow sufficient time to support the person wholly and properly”. Multiple practitioners emphasised the importance of “focusing on effective communication” and suggested “using conversations” rather an “authoritarian approach”, “threats of punishment” or “the use of orders and directives”. The availability of “all forms of information in accessible formats” was seen as a crucial adjunct to effective practice. These approaches were understood as necessary to counter the common experience many people encounter in their engagement with many services which are generally characterised by “refusal and zero tolerance”.

5.7.2 Managing expectations

Maximising the effectiveness of a relational approach were a number of factors relevant to practitioner and professional assumptions, behaviour and preparedness. Central to this is “utilising a trauma informed approach”. Factors ranged from “being proactive”, taking a “safety planning approach”, “readiness for crisis

intervention", "addressing core need first" and "being prepared to begin intensive and step down slowly over a longer period of time". A "harm minimisation approach which takes the holistic view and just treats the substance use as a part of a bigger problem" was seen by one practitioner as an important adjunct to effective relational practice. Some practitioners highlighted that progress is often accompanied by setbacks for the person and some saw their role as advocating within the system for recognition that "relapse and lapses are a part of the journey". These practitioners argued that support for the person was important when they were experiencing these difficulties. This requires practitioners to "keep on turning up" and to "work with the person where they are – don't over-expect".

Several practitioners also emphasised both the importance and difficulty of "managing clients' expectations" and "being realistic". As one explained, "they often are so institutionalised they've got no idea of how difficult it is to obtain housing, and even more so in the current crisis that we're in." So, as well as the "need to reassure them we will advocate for them" there is also a need to be clear that "this is the reality of the situation". Some practitioners also address the issue of "pessimism" or "lack of motivation" on the part of their clients, with one practitioner summarising thus:

Those [who] have had frequent contact with the police and criminal justice become institutionalised to that way of thinking, saying, "Oh yeah, I know the process, I know what's going to happen. Yeah, there's no way out from this for me. This is my life. It's not a lot, but it's my life."

5.7.3 Rights promotion

A majority of practitioners and professionals emphasised the importance of a rights promotion approach in working with their clients with disability who are or have been in the CJS. This approach pays attention to "ensuring the persons knows and understands their rights". Various approaches to developing this knowledge within the support relationship were described as "creating space for autonomy and decision-making" which for one practitioner meant the support relationship is "never about solving a problem but supporting someone and letting them decide what is a success to them". Rights promotion was associated for many practitioners with assisting the person to "develop their voice" or to "promote their autonomy" to enable them to "ask questions and understand things that they do need to do and don't need to do and finding ways to help them make informed decisions as to what's going to happen next, whether they do or don't choose to comply with instructions or answer questions or anything like that". Giving people knowledge about their rights, means that they have better "knowledge about legal protections".

5.7.4 Interagency response

Practitioners and professionals were unanimous about the central importance of effective interagency working in delivering good outcomes for people with disability in the CJS, with one observing that "people's lives can break down if they don't have all these people/agencies working together". There were varying reflections on the extent to which this currently happens, with one practitioner capturing a common experience as "no-one is looking at the whole picture and everyone kind of has their blinkers on for what their role is". Another reflected that "none of the departments are working together - when you sit around a meeting table with different stakeholders from different organisations, each one of them will bring out their own legislation which all doesn't really marry up". Effective practice was described by one practitioner as "working collaboratively to a shared outcome and the client is part of that partnership". This was seen to entail "knowing the different roles that each of the different services can play, but then being open to communicate effectively within that collaboration".

Practitioners suggested that effective collaboration "can be both formal and informal – based in organisational relationships rather than formal structures" where relationships between individuals within different organisations tends to be key, rather than reliance only on formal referral pathways. Experience suggests that "effective collaboration between agencies is often dependent on individual workers and their orientation and commitment" and that:

...making a phone call and connecting with someone in a very deliberate way opens the opportunity to have a genuine sharing of knowledge about a person's experience, but also about the purpose of the referral, the types of different systems, and the different roles that agencies will provide.

Suggestions for smooth interagency working included a “hub and spoke model” to ensure one point of contact as the designated manager of all stakeholders who coordinates and communicates clearly to all other stakeholders. For people entering and being released from prison, the use of an independent person (not employed by or situated in Queensland Corrective Services) who is responsible for coordination, and to “tie everything in”, was also suggested as a promising model.

5.7.5 Culturally holistic

First Nations Australian practitioners and professionals were unequivocal that holistic support is crucial to improving the experiences of Aboriginal and Torres Strait Islander people with disability. This specifically encompasses “care for social and emotional wellbeing, including spiritual, cultural, and kinship connections”. An example of this culturally holistic approach was seen in the work of community justice groups. As one practitioner put it, these groups play an integral part in assisting the court to understand community and individual defendants in a holistic way. According to First Nations Australian practitioners and professionals, cultural responses could also be enhanced by giving priority to the training of magistrates engaged in Murri Courts, alongside a need for much more considered and consistent approach to the appointment of magistrates. In addition, First Nations Australian practitioners were unanimous about the pressing need for culturally safe disability assessments. This, as one practitioner put it, would “greatly change the sentencing outcomes for many Aboriginal and Torres Strait Islander people. It would mean a profound cost saving and that less people would be sent to prison”. In the absence of these measures, “every day the courts are facing the dilemma of possibly punishing the disabled for the consequences of their disability”

Overall, it may be said that the views expressed by professionals and practitioners about how to improve the experiences and outcomes for people with disability in the CJS centre on the importance of consistency, flexibility, transparency and collaboration in individual and interagency practice. Relational practice, when combined with rights promotion can better serve the support needs of people with disability and culturally holistic approaches are foundational to better practice for First Nations Australians with disability in the CJS. System responses that are better integrated and based on a collaborative model are more likely to result in improved outcomes for people with disability.

6. The Amaroo Aboriginal & Torres Strait Islander Elders Justice Group (Amaroo)

There is a critical need to foreground First Nations Australian knowledges and experiences of, and solutions to, the extreme over-representation of Aboriginal and Torres Strait Islander people in the CJS (Cunneen & Tauri 2016). The final section on findings from this study reports on a highly successful Community Justice Group for First Nations Australians in FNQ. Amaroo, a Community Justice Group (CJG), is an initiative which has sought to improve the circumstances of First Nations Australians with disability in the CJS within FNQ. This next section introduces the practices and principles behind the work of this group.

Amaroo is a First Nations Australian-driven alternative to mainstream criminal justice responses for Aboriginal and Torres Strait Islander people, including those with a disability (for further reading on the successes of Amaroo, see Payne (2022)). Amaroo exemplifies the kind of initiatives that First Nations Australian communities and researchers have been calling to expand for decades (Marchetti & Daly, 2004; Ryan et al., 2006; Blagg et al., 2021). Moreover, the National Agreement on Closing the Gap, has four Priority Reform areas, two of which have direct relevance to the work of Amaroo and other First Nations Australian community justice groups:

- (1) *Shared decision making*: a commitment to building and strengthening structures that empower Aboriginal and Torres Strait Islander people to share decision-making authority with governments to accelerate policy and place-based progress against Closing the Gap (National Agreement 2020, p. 5).

- (2) *Building the community-controlled sector*: a commitment to building formal Aboriginal and Torres Strait Islander community-controlled sectors to deliver services to support Closing the Gap (National Agreement 2020, p. 8).

By prioritising a non-punitive, family and community-centred, healing, and holistic support model over the mainstream individualised, adversarial, punishment approach, Amaroo has achieved exceptional results. Since its inception, Amaroo has assisted over 1,500 First Nations Australian men and women involved in the CJS. Each person spends an average of 4 months being supported, or “walking with” the Amaroo Elders. According to data collected by Amaroo (not confirmed by courts data), out of those 1,500 people, just 5% have re-offended (Amaroo Coordinator).

While First Nations Australian justice groups provide support to many Aboriginal and Torres Strait Islander people with disability in contact with the CJS, there is no known research examining the expertise and capacity of existing justice groups to support this group. This case study demonstrates the success of Amaroo in responding to the needs of First Nations Australians with disability. It suggests that increased investment in Amaroo and other successful First Nations Australian justice groups, including via the funding of a clinician to undertake the well-established need for culturally safe disability assessments (Ferdinand et al., 2021), will lead to improved outcomes for First Nations Australians with disability, as well as their families and communities.

6.1 Values, principles, and practices

Amaroo Elders described the core values and principles of Amaroo as family and community-centred, humanistic and relational. In practice, this means that people assisted by Amaroo are “loved, cherished and cared for”. Elders noted how “treating them as human” is central to building trust, “because half of the problem for their crimes is no trust in anybody”. Promoting healing and growth is critical “because you’ve got that intergenerational abuse that’s gone on for so long, and the effect on First Nations people is that they’re diminished from day one and the underlying stuff has not been addressed sufficiently”. As “custodians⁵ of the Murri Court”, Amaroo Elders have garnered deep respect from local magistrates, exemplified in the way in which the magistrates are eager to “come and do Murri Court”. Working collaboratively with community and government, Amaroo has implemented a weekly yarning circle where all stakeholders are welcomed, and knowledge and learning is shared between parties: “Politicians, lawyers, magistrates...There are people knocking on the door wanting to come and find out how we can help them do things a bit better.”

6.2 Supporting First Nations Australians with disability

While Amaroo supports many First Nations Australians with disability, the Elders are acutely aware that a considerable amount of the people they support have undiagnosed disabilities. “They go through the court and no-one knows anything’s wrong”. Further, “there’s nothing in place to take care of people with disability” entering the CJS. Rather, the Elders were aware that most First Nations Australians with disability are funnelled into prisons where there is no “education about how to deal with [them]”; “They lock them away [and] forget about them. [It’s] the worst thing you can do”.

The Elders unanimously agreed that efforts to address the injustices experienced by the large number of First Nations Australians with disability in contact with the CJS requires a strategic change. To ensure the progression of culturally safe assessments of First Nations Australian defendants with suspected disabilities, Amaroo Elders communicated a need for funding to be provided for a clinician based within Amaroo who can undertake disability diagnoses.

6.3 Information sharing and interagency responses

The Elders spoke in depth about the multiple challenges they have experienced in navigating siloed and competitive systems within and beyond the CJS. Similar comments were made by First Nations Australian practitioners in FNQ. Practitioners reported deep frustration with the tendency for workers in many services to maintain a stance whereby they argue that “this is my client. You can’t touch this client.” Criminal justice

⁵ While the term “custodian” is not used by DJAG to describe the role of Elders in Murri Courts, the invaluable role played by Aboriginal and Torres Strait Islanders in the design and management of Murri Courts is well recognised (see for example, Payne (2022)).

stakeholders, government departments and other organisations engaged with First Nations Australians with disability were seen to be driven by “all the paperwork [with] no connection with family, culture, relationships. Nothing. It’s all paperwork, data-driven”. This data-driven approach was further problematised by the Elders who noted a clear lack of interagency collaboration and refusal by stakeholders to share information of direct relevance. This lack of information sharing was seen to be driven by competition for resources and job security: “Everyone’s got their own lot of money. I think they thought we were a threat, coming in to take their jobs. They [are] so guarded with sharing information”.

Accordingly, the Elders stressed the need for greater sharing of information and interagency collaboration. While the building of relationships was seen as critical to facilitating better collaboration across agencies, wider organisational change was viewed as imperative to establish real and lasting change. Specifically, the importance of greater collaboration between government departments related to education, health and justice (including the police) was communicated.

7. Discussion

The United Nations Office on Drugs and Crime (2023) asserts that criminal justice systems around the world face many challenges. This report highlights one critical challenge – the ability of these systems to adequately respond and support people with disability who come into contact with these systems. This present study, commissioned by DJAG, sought to understand the lived experience of people with disability in contact with the Queensland CJS. The study has examined Australian and international research on criminal justice services for people with disability; explored the perceptions of people with disability (including First Nations Australians with disability), and family members of people with disability; and elicited the views of practitioners and professionals who support people with disability in contact with the Queensland CJS. It has considered many elements of the CJS as it relates to people with disability, including the practices of the police service, courts, and corrective services. Some consideration has also been given to how the different stakeholders within the CJS work together and how information about individual people with disability is shared and utilised across agencies. Discussed below is a number of key overarching themes derived from the study as a whole – namely service and system failures to understand the whole context of a person with disability’s life; the need for people with disability to access procedural justice in their CJS encounters; a call for legitimate cultural responsiveness for First Nations Australians with disability; and the need for transparent and collaborative interagency mechanisms.

7.1 The decontextualised individual

This study, like many others before it, has shown how responding to the needs of people with disability who experience contact with the CJS is hampered by a failure to consider the impact of impairment understood in the whole context of the person’s life. People with disability in contact with criminal justice systems often have a history of cumulative social disadvantage that is not adequately addressed by existing social resources (Dias et al., 2013b). This study has provided examples of how people with disability in contact with the CJS can be stuck within cycles of poverty, homelessness, violence and abuse. Family members and practitioners have reported instances where a person’s behaviour arising from their disability and life experiences has been decontextualised and criminalised rather than recognised and supported. In line with other research (for example, (Dowse et al., 2019)), this lack of understanding, along with an absence of appropriate supports within the community, often results in the CJS acting as a form of behaviour management and at times, another form of institutionalisation for people with disability.

Understanding the full context and circumstances of a person at the time of an offence is a complex matter. Many practitioners in this study have argued that effective responses from the CJS involve more than the gathering of information about diagnostic labels and psychosocial history. Learning about the context surrounding a person’s offending also involves understanding the person’s functional needs within the CJS setting and suspending negative stereotypes regarding stereotypes related to offences, gender, disability and culture. It involves obtaining knowledge with a clear sense of purpose and a high degree of insight and reflection on the part of the person or system gathering such information. It involves adapting communicative practices and often accessing help from those who know the person with disability. It involves an

organisational context which provides CJS authorities with the time and resources to undertake diligent care. Ultimately, a holistic understanding of a person can happen early in any CJS contact, with the goal that a person with disability may be diverted from further involvement with police, courts and corrective services.

7.2 A need for accessible procedural justice

This study has unequivocally found that people with disability and their family members require access to procedural justice in their encounters with the Queensland CJS. Procedural justice, according to Tyler et al. (2015) involves the examination of CJS authorities' decision-making and interpersonal responses to citizens which has bearing on those citizens' confidence and compliance with the law. Perceptions of procedural justice are based on four relational criteria – namely citizen participation, being treated with dignity and respect, neutrality and fairness in decision-making, and trustworthiness of authorities. The accounts of participants with disability, family members, practitioners and professionals explored in this study indicate that overall perceptions of procedural justice were poor.

Citizen participation involves people with disability having a voice in CJS encounters and feeling safe to express their views irrespective of the outcome (Ellem & Richards, 2018). There were examples where people with disability were afraid to disclose their need for psychological counselling within the prison setting and to disclose their disability to police for fear of retribution, either from CJS authorities or from others within the system (such as other prisoners). Similarly, several practitioners expressed concerns that citizen participation, which inevitably involves a person with disability sharing personal information, could be shared with others without the person's consent.

Interpersonal relations with CJS authorities can send strong messages to the person with disability about their social status and worth (Jonathan-Zamir et al., 2015). If authorities treat the person with dignity and respect, their experience of the CJS is likely to be less traumatic, and the person is likely to be more compliant with the law. People with disability who have had traumatic experiences of abuse and violence in their lives can greatly benefit from respectful interactions with CJS authorities. Unfortunately, findings indicate in this study that there were some practices by police, such as the removal of clothing and the failure to adequately listen to the concerns of people with disability and family members that showed a lack of respect and understanding.

Positive perceptions of procedural justice can also occur when CJS authorities use objective, legitimate criteria upon which to make decisions (Tyler et al., 2015). Practitioners and professionals in this study often referred to the punitive bias in decision-making by police and the courts. One exception to this punitive approach was given in relation to community-based sentencing orders, where parole officers were reported by one participant with disability to take a harm-minimisation approach to parolees who had drug addiction problems.

Finally, the perceived trustworthiness of CJS authorities can be enhanced when people with disability see that those authorities are driven by the need to help them and the broader community (Murphy, 2015). There were both positive and negative responses of CJS professionals to people with disability in this study. A more consistently helpful response is needed in all stages of the CJS.

Practitioners and professionals called for further accommodations such as Easy Read information and adapted procedures to ensure procedural justice. Supported decision-making processes, particularly for people with cognitive disability were discussed by some participants as something that needed to be incorporated into CJS practices. This would be in line with international practices that recognise the importance of people with disabilities remaining at the centre of decision-making processes in their lives (Shogren et al., 2018).

7.3 An absence of legitimate cultural responsiveness

This study makes an important contribution to understanding the lived experience of First Nations Australians with disability in contact with the CJS. It is well known that the involvement of people with disability within the CJS is further compounded if a person is First Nations Australian (Baldry et al., 2015). This study provided many examples from First Nations Australian participants with disability who presented with complex trauma and experienced ongoing surveillance by CJS authorities, and frequent cycling through courts and in and out of corrective service centres. It is clear that there are both human rights and practical imperatives to improving CJS responses to this group (Holland et al., 2021). These findings note the absence of culturally appropriate

neuropsychological/cognitive assessments for First Nations Australians with disability appearing in court. Practitioners reported a lack of acknowledgement of cultural law, and poor economic investment in First Nations Australians community justice groups. A culturally holistic response is needed which acknowledges the spiritual, cultural and kinship connections of First Nations Australians with disability. The Amaroo Aboriginal and Torres Strait Islander Elders Justice Group operating in FNQ has been presented as one example of such a holistic response. Further research on other First Nations Australian community justice groups throughout Queensland could also add to the knowledge base of how best to support First Nations Australians with disability in contact with the CJS.

7.4 A need for transparent and collaborative interagency mechanisms

Finally, in its exploration of all stages of the CJS, the findings of the study make a compelling case for more effective, transparent and collaborative interagency processes in relation to people with disability in contact with the CJS. Similar to other studies (for example, Lansdell et al., (2018a)), the findings from people with disability, family members and practitioners/professionals indicate that the pathways for people through the system are often poorly coordinated, and stronger connections need to be made with appropriate community supports outside the CJS. Effective interagency collaboration was described by practitioners and professionals in this study as working towards a shared outcome and including the person with disability in decision-making. Collaboration could occur at both a formal and informal level, including relationships between professionals from different organisations and more formal agreements and mechanisms between agencies. As previously mentioned by Dowse et al. (2019), the coordination of supports around people with disability with complex needs involves integrating multiple supports in a timely manner.

The next section outlines specific recommendations which are drawn together from existing evidence in the literature, and which respond to the findings of consultation with people with lived experience of disability and the CJS, their families and from the professionals, practitioners and organisations who work with them. It is hoped these suggestions can be incorporated within the broader strategies DJAG is employing to improve the service response to people with disability in the Queensland CJS.

8. Recommendations

8.1 Overarching

1. Develop a Queensland Disability Justice Strategy to address unequal access to justice for people with disability. The strategy would identify key areas for priority actions and provide an overarching framework and ongoing agenda for reform and continuous improvement across the CJS⁶. The strategy should be co-designed with people with lived experience of disability and the CJS and include people with lived experience in its governance mechanisms and processes and its evaluation. Within this strategy, there is a need to support people with disability leaving the CJS (in terms of housing and finances); and a need for better assessment and recognition of disability in the CJS⁷.
2. Develop a First Nations Disability Justice Strategy, which aligns with the Queensland Disability Justice Strategy (see 1. above) and which integrates Indigenous knowledges to address the specific historical, cultural and social context and experiences of First Nations Australians with disability in the CJS. The

⁶ As recommended by the Australian Human Rights Commission <https://humanrights.gov.au/our-work/1-disability-justice-strategies-introduction>. See for example the ACT Disability Justice Strategy https://www.communityservices.act.gov.au/_data/assets/pdf_file/0008/1397924/Disability-Justice-Strategy_v2.pdf. See also Queensland Advocacy Inc <https://qai.org.au/wp-content/uploads/2021/04/Disabled-Justice-Reforms-to-Justice-for-Persons-with-Disability-in-Queensland.pdf> and Office of The Public Advocate https://www.justice.qld.gov.au/_data/assets/pdf_file/0006/271095/Submission-FINAL-ADCQ-PA.pdf

⁷ This recommendation aligns with the outcomes of *Australia's Disability Strategy 2021-2031* (https://www.disabilitygateway.gov.au/ads/strategy_queens), and *Queensland Disability Plan 2022-2027* (<https://www.cyjma.qld.gov.au/campaign/queenslands-disability-plan>).

strategy should be co-designed with First Nations Australians with lived experience and their communities, and include First Nations Australians in its governance mechanisms, processes and evaluation. The development of the strategy should consider further economic investment in First Nations Australians community justice groups and take account of the values, principles, and practices embedded in the Amaroo Aboriginal and Torres Strait Islander Elders Justice Group model and other successful First Nations Australians community justice groups.⁸

3. A key early activity of a First Nations Justice Strategy should be to audit the cultural appropriateness of systems and processes of the Queensland CJS including screening and assessment, therapeutic interventions and advocacy and support models and address the provision of specialist clinicians to work with First Nations Australians with disability in contact with the CJS. This process should be conducted by suitably qualified First Nations specialist professionals⁹.
4. Any strategies (1. and 2. above) developed should consider issues for rural, regional and remote areas of Queensland and include:
 - an audit of specialist services available in regions including access to
 - Independent Third Persons or Support Persons
 - legal representation
 - appropriate and timely assessment
 - disability support services.
 - feasibility assessment of a 'telehealth' type model for access to specialist advice.
5. Focus funding on prevention and early intervention for vulnerable/at-risk people with disability at the earliest point in criminal justice contact. Examples include:
 - a. enhancement of a co-responder and/or alternate responder models (see 11. below)
 - b. non-legal advocate programs (such as the QAI Justice Support Program)
 - c. improving accessibility of, and integrated referral process for support services in the community.
6. Consider developing and implementing an end-to-end case management model for people with cognitive disability in their criminal justice interactions, from earliest contact with police to exit from custody. This could utilise, adapt or expand on existing or previously evaluated models used in Queensland or elsewhere including the QAI Justice Support Program, NSW Justice Advocacy Service and the NSW Cognitive Impairment Diversion Program¹⁰.
7. Increase capacity for independent advocacy and support to be provided for people with disability at all points of the CJS (see 5. above for exemplar models).
8. Enhance awareness of the functional impact of disability for the CJS workforce at all stages and in all agencies in recognition that incarceration and punishment should be a last resort in responding to people with disability who come into contact with the CJS¹¹. This could be achieved through the development and provision of cross-systems training, education and supervisory opportunities. People with disability and First Nations Australian people with disability who have lived experience of the CJS should be central to the co-design and co-delivery of knowledge enhancement strategies and activities.

⁸ This recommendation is in line with the findings of the *Phase 1 Report: Evaluation of Community Justice Groups* (The Myuma Group, 2021) where stakeholders continue to believe that Community Justice Groups need more support with resources.

⁹ See for example <https://www.yiliyapinya.org.au/board-members> and <https://indigenoussychservices.com.au/>

¹⁰ QAI Justice Support Program <https://qai.org.au/criminal-justice/>; NSW Justice Advocacy Service <https://jdrs.org.au/jas/>; NSW Cognitive Impairment Diversion Program <https://dcj.nsw.gov.au/resources/cognitive-impairment-diversion-program.html>

¹¹ Plain Language Fact Sheets are a first step toward this

9. Continue to review the service delivery model of forensic disability services to ensure safeguards for people with cognitive disability (with and without mental health issues) on forensic and other orders¹².
10. Development of new programs and processes for First Nations Australian people and non-Indigenous Australians with disability should be co-designed with people/First Nations Australians with disability and their communities who have lived experience of the CJS to ensure that people with disability are included in the planning, design, and evaluation of services and supports.

8.2 Policing

11. Extend the current co-responder model and consider the implementation of an alternate responder model¹³ which uses peer workers and trained practitioners with a trauma-informed and complex disability lens to focus on de-escalation in police interactions and diversion from the police and the CJS more generally.
12. Enhance procedural efficacy and accountability in recognising people with disability who are 'at-risk' of having impaired decision-making capacity, that is, not understanding and participating safely in police processes of interview and charge in line with an adult safeguarding approach¹⁴. This could be achieved through targeted funding for a relevant training program.
13. Undertake a review and update of the content and effectiveness of current policy and processes set out in the QPS OPM in relation to people with disability¹⁵. This includes but is not limited to Section 6.3 which may be expanded to acknowledge that officers should seek advice from support persons present to inform the officer's evaluation of the person's disability and relatedly Section 6.3.4 where stations and establishments are required to maintain (revising six monthly) a list of support persons appropriate for their area of responsibilities.
14. Strengthen assistance for police to ensure that provisions set out in the current QPS OPM are appropriately implemented. This could take a similar form to the current Legal Aid Qld Youth Legal Advice Hotline, which could be expanded to include advice regarding suspects with impaired capacity¹⁶.
15. Improve availability of support for vulnerable persons at police stations and ensure that independent third-party support persons are adequately trained to assist with rights promotion and communication in police interviews. This could draw on the principles, approach and mechanisms of the PACT model currently utilised for vulnerable victims and witnesses in court contexts in Queensland but focus on content and advice appropriate to support police knowledge of working with vulnerable persons and their independent support persons¹⁷.
16. Continue to develop capability within QPS complaints processes for specialist provision of support for people with disability to report misconduct or unfair treatment during interrogation and provide education

¹²See also the recommendations of the 2018 Review of the Queensland Forensic Disability Service System <https://disability.royalcommission.gov.au/system/files/exhibit/EXP.0049.0002.0087.pdf>. The Review of the Forensic Disability Service outlined many recommendations to improve the FDSS, including expanding the role of the Director of Forensic Disability. Whilst a future role of the Director may be broader in relation to oversight of people with cognitive disability on forensic and other orders, it is important to note that this is not the current role of the Director.

¹³See for example the Crisis Assistance Helping Out On The Streets (CAHOOTS) model <https://www.eugene-or.gov/4508/CAHOOTS>

¹⁴See The Queensland Public Advocate's report on Adult Safeguarding and in particular the approach to capacity and impaired decision making ability https://www.justice.qld.gov.au/_data/assets/pdf_file/0011/726599/202207-adult-safeguarding-issues-paper-volume-one-final-.pdf

¹⁵QPS Operational Procedures Manual <https://www.police.qld.gov.au/qps-corporate-documents/operational-policies/operational-procedures-manual>

¹⁶Queensland Legal Aid Youth Legal Advice Hotline <https://www.legalaid.qld.gov.au/Find-legal-information/Criminal-justice/Young-people-and-the-justice-system>

¹⁷PACT <https://pact.org.au/>

to the wider stakeholder support system to utilise this process which may assist people with disability to make reports.

17. Continue QPS activities to establish Domestic and Family Violence and Vulnerable Persons Units in police districts , and the State Disability and Elder Abuse Coordinator provide education and training to members of these units to support people with disability interacting with police.
18. Introduce at local, community levels, a specialist committee that ensures Aboriginal Police Liaison Officers are used appropriately and effectively.

8.3 Courts and Legal

19. Explore additional opportunities for court diversion for people with cognitive disability (who may also have co-occurring psychosocial disability).
20. Implement a justice advocacy and support service which specifically includes court and other relevant support services.
21. Consider opportunities for more timely screening for disability at court and expanded assessments that may be provided to the court..
22. Develop specialist accessibility provisions for people with cognitive disability who are required to attend court. These would include for example:
 - court familiarisation processes
 - ensuring physical accessibility
 - providing accessible information about court processes¹⁸.

8.4 Prison

23. Enhance capacity for screening for disability at intake with a particular focus on functional assessment to determine supports required in custody. Where diagnostic assessment is required, combine this with functional assessment. Consider the role of disability specialist staff in this process.
24. Further develop and expand on a more individual approach to the management of prisoners with cognitive disability who are 'at risk' in the prison environment. This could be achieved through expansion of the "Prisoner of Concern" model already being implemented in Queensland Corrective Services contexts.
25. Provide long-term secure funding for dedicated disability specialist staff to be available within all correctional facilities throughout Queensland.
26. Ensure that in-prison programs are inclusive of, accessible to or specifically designed to accommodate the support needs of people with disability to enable them to participate.
27. Develop a more effective referral system prior to and post-release. This could be enhanced with clearer MOUs between Queensland Health and Queensland Corrective Services (QCS), NDIS and QCS and which would be applicable in all regions of Queensland.

¹⁸ See UK Government for eg. <https://www.gov.uk/government/publications/going-to-a-criminal-court-support-for-defendants>

28. Develop and provide accessible information about services in the community for people with disability to assist with pre-release planning.
29. Undertake an evaluation of the Prisoner Carer's Program to ensure adequate training, safeguarding and transparency of outcomes.
30. Enhance training for Corrections Officers in understanding prisoner vulnerability, cognitive impairment and complex trauma.

8.5 Community Corrections/Post-release

31. Development of a specialist wraparound model to ensure effective re-entry and maintenance of ex-prisoners with cognitive disability in the community.
32. Provide a dedicated community-based small-group intervention service for men and women with disability who have experienced violence, especially sexual violence or who are perpetrators of domestic violence. This should be appropriately resourced so that it is available in all regions of Queensland.
33. Increase availability of step-down accommodation/housing and specialist supported independent living to community housing.

8.6 Data and Information Sharing

34. Any approach to developing a framework for data and information sharing must balance the right to privacy of individuals and their personal information with the need for information sharing which can be critical for safeguarding and well-being and for effective service delivery.
35. Implement a supported decision-making model to enable people with cognitive disability and those at risk of decision-making capacity limitations to provide informed consent to information sharing about them.
36. Articulate intra- and cross-agency (Justice, Health, Disability, Safeguarding agencies etc) priorities for data and information sharing which differentiate processes of data linkage for aggregation and reporting from those related to client management data sharing and which clearly identify the purposes, benefits and risks for all stakeholders in terms of the need for information sharing, safeguarding and privacy.
37. Develop information/data sharing framework and agreements within CJS agencies and across CJS, Health and Community including data dictionaries, protocols for access requests and responsibilities regarding ethical use of any data.
38. Undertake a thorough review of legislative, policy and technical constraints and enablers to data and information sharing between agencies including human rights instruments, privacy legislation, and agency specific interpretation.
39. Utilise learnings from the National Disability Data Asset Pilot to build system capability for effective data capture and linkage across justice and disability support systems.
40. Given that disability is inconsistently identified or not identified at all in and across multiple agencies of the CJS and in other community providers, the introduction of a system-wide 'at risk' flag or register may be considered subject to privacy considerations. In the absence of any confirmed diagnostic information a

“person of concern” may be identified by any agency with which the person interacts which may point to the presence of disability and so alert CJS personnel to the possible presence of vulnerabilities related to the need for supports. This can ensure equitable access in relation to CJS processes, with potential markers including the following:

- adult guardianship orders
- support person having been called by police
- engagement with disability advocacy agencies
- NDIS participation
- being a recipient of a disability support pension
- legal representatives express concern about capacity (but may not action)
- courts and judicial personnel may note concern but are unable to act on those
- family member having made representation to CJS agencies
- screening or other assessment in custody
- self-identification as a person with disability

9. Conclusion

This report has presented findings of the DJAG funded project *Insights from people with lived experience of disability and the justice system*. This project presents the viewpoints of people with disability, family members, practitioners and professionals of the Queensland CJS. These views have been supplemented by a review of Australian and international research literature on criminal justice services for people with disability.

The project has explored the experiences of First Nations Australians and non-Indigenous Australians with disability who have interacted with criminal justice agencies and professionals in the Queensland CJS in the last five years. While the findings in this report represent perspectives of the CJS from a select number of people, the accounts consistently illustrate how involvement in the CJS can have devastating impact on the lives of people with disability and their families. The complexity of issues facing people with disability are further clarified by practitioners and professionals who support this group of people. Practitioners and professionals have described the challenges in providing support and offered suggestions to enable better outcomes for people with disability. The recommendations listed in the report are derived from these suggestions. Further research is needed regarding how individual and aggregate data related to people with disability is shared between Queensland CJS and other agencies, including an in-depth examination of information sharing processes, and the challenges and opportunities associated with these. It is hoped that the report will assist DJAG in its aims to make the Queensland CJS more responsive to people with disability.

10. References

- ACT Government. (2019). *Towards disability justice for the ACT: Summary of research and consultations*. https://www.communityservices.act.gov.au/__data/assets/pdf_file/0005/1337783/Towards-Disability-Justice-for-the-ACT-Summary-of-research-and-consultations-2019.pdf
- Ali, A., Ghosh, S., Strydom, A., & Hassiotis, A. (2016). Prisoners with intellectual disabilities and detention status. Findings from a UK cross sectional study of prisons. *Research in Developmental Disabilities*, 53-54, 189-197. <https://doi.org/10.1016/j.ridd.2016.02.004>
- Allison, F. & Cunneen, C. (2018) *Justice Reinvestment in Northern Australia*, The Cairns Institute Policy Paper Series, Cairns: James Cook University.
- American Association on Intellectual and Developmental Disabilities. (2022). *Defining Criteria for Intellectual Disability*. American Association on Intellectual and Developmental Disabilities.
- American Psychiatric Association. (2022). *Diagnostic and statistical manual of mental disorders: DSM-5-TR* (5th edition, text revision. ed.). American Psychiatric Association Publishing.
- Anazi, S., Maddirevula, S., Salpietro, V., Asi, Y. T., Alsahli, S., Alhashem, A., Shamseldin, H. E., AlZahrani, F., Patel, N., Ibrahim, N., Abdulwahab, F. M., Hashem, M., Alhashmi, N., Al Murshedi, F., Al Kindy, A., Alshaer, A., Rumayyan, A., Al Tala, S., Kurdi, W., ... & Alkuraya, F. S. (2017). Expanding the genetic heterogeneity of intellectual disability. *Human Genetics*, 136(11-12), 1419-1429. <https://doi.org/10.1007/s00439-017-1843-2>
- Anstis, S., & Thomas, S. D. M. (2022). Exploring the victim offender overlap among people with an intellectual disability. *Journal of Applied Research in Intellectual Disabilities*, 35(3), 789-799. <https://doi.org/10.1111/jar.12984>
- Aussie Deaf Kids. (2022). *Terminology for deafness*. Aussie Deaf Kids. Retrieved 24th August from <https://www.aussiedeafkids.org.au/terminology-for-deafness.html>
- Australian Human Rights Commission. (2014). *Equal before the law: Towards disability justice strategies*. https://humanrights.gov.au/sites/default/files/document/publication/2014_Equal_Before_the_Law.pdf
- Australian Institute of Health and Welfare. (2020) *People with disability in Australia*, AIHW. <https://www.aihw.gov.au/getmedia/ee5ee3c2-152d-4b5f-9901-71d483b47f03/aihw-dis-72.pdf.aspx?inline=true>.
- Australian Institute of Health and Welfare. (2019). *The health of Australia's prisoners*. <https://www.aihw.gov.au/getmedia/2e92f007-453d-48a1-9c6b-4c9531cf0371/aihw-phe-246.pdf.aspx?inline=true>
- Baldry, E. (2018). Rights of persons with disability not to be criminalised. In E. Stanley (Ed.), *Human rights and incarceration: Critical explorations* (pp. 53-78). Palgrave Macmillan.
- Baldry, E., Clarence, M., Dowse, L., & Trollor, J. (2013). Reducing vulnerability to harm in adults with cognitive disabilities in the Australian criminal justice system. *Journal of Policy and Practice in Intellectual Disabilities*, 10(3), 222-229. <https://doi.org/10.1111/jppi.12039>
- Baldry, E., Dowse, L., Clarence, M., & Eastman, C. (2013). *People with mental health disorders and cognitive disabilities in the criminal justice system – Impact of housing NSW interventions and contacts with social housing system*. <https://www.mhdc.d.unsw.edu.au/7-nested-studies-report-housing-nsw-people-mental-health-disorders-and-cognitive-disabilities-criminal%2Chtml>
- Baldry, E., McCausland, R., Dowse, L., & McEntyre, E. (2015). *A predictable and preventable path: Aboriginal people with mental and cognitive disabilities in the criminal justice system*. <https://webapps.unsw.works.library.unsw.edu.au/fapi/datastream/unsw:37093/binb10f2bda-8816-4112-aeeb-6cd6d8efe6f7>
- Baldry, E., McCausland, R., Dowse, L., McEntyre, E., & MacGillivray, P. (2016). "It's just a big vicious cycle that swallows them up": Indigenous people with mental and cognitive disabilities in the criminal justice system. *Indigenous Law Bulletin* 8(22), 10-16. <https://doi.org/10.3316/ielapa.896305946383264>
- Baloch, N. A., & Jennings, W. G. (2018). Offender vocational rehabilitation services and postrelease employment: A case for inmates with disabilities. *Journal of Offender Rehabilitation*, 57(6), 402-414. <https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=134672856&site=ehost-live>
- Bhandari, A., van Dooren, K., Eastgate, G., Lennox, N., & Kinner, S. A. (2015). Comparison of social circumstances, substance use and substance-related harm in soon-to-be-released prisoners with and without intellectual disability. *Journal of Intellectual Disability Research*, 59(6), 571-579. <https://doi.org/10.1111/jir.12162>
- Blagg H, Tulich T, Williams R, Mutch R, May SE, Badry D & Stewart M (2021) *Decolonising Justice For Aboriginal Youth with Fetal Alcohol Spectrum Disorders*, London: Routledge.

- Board, T., Ali, S., & Bartlett, A. (2015). Intellectual disability screening in women prisoners: preliminary evaluation. *International Journal of Prisoner Health*, 11(4), 243-254. <https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=111062248&site=ehost-live>
- Boodle, A., Ellem, K., & Chenoweth, L. (2014). Anna's story of life in prison. *British Journal of Learning Disabilities*, 42(2), 117-124. <https://doi.org/10.1111/bld.12015>
- Bower, C., Watkins, R. E., Mutch, R. C., Marriott, R., Freeman, J., Kippin, N. R., Safe, B., Pestell, C., Cheung, C. S. C., Shield, H., Tarratt, L., Springall, A., Taylor, J., Walker, N., Argiro, E., Leitão, S., Hamilton, S., Condon, C., Passmore, H. M., & Giglia, R. (2018). Fetal alcohol spectrum disorder and youth justice: A prevalence study among young people sentenced to detention in Western Australia. *BMJ Open*, 8(2), Article e019605. <https://doi.org/10.1136/bmjopen-2017-019605>
- Braun, V. & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology*, 3(2), 77-101. <https://doi.org/10.1191/1478088706qp0630a>
- Brookbanks, W., McGinn, V., & Chu, J. T. W. (2022). Unfitness to stand trial and fetal alcohol spectrum disorder: Understanding and responding to FASD within the criminal justice system in New Zealand. *Behavioral Sciences & the Law*, 40(1), 159-169. <https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=155059676&site=ehost-live>
- Brown, J., Long-McGie, J., Wartnik, J. A., Oberoi, P., Wresh, J., Weinkauff, E., Falconer, G., & Kerr, A. (2014). Fetal Alcohol Spectrum Disorders in the Criminal Justice System: A Review. *Journal of Law Enforcement*, 3(6), 1-10. <https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=96433268&site=ehost-live>
- Browne, C., & Smith, I. C. (2018). Psychological interventions for anger and aggression in people with intellectual disabilities in forensic services. *Aggression and Violent Behavior*, 39, 1-14. <https://doi.org/10.1016/j.avb.2018.01.002>
- Catalano, G., Mason, J., Brolan, C. E., Loughnan, S., & Harley, D. (2020). Screening prisoners for cognitive impairment – literature review. *Journal of Intellectual Disabilities and Offending Behaviour*, 11(4), 201-210. <https://doi.org/10.1108/JIDOB-01-2020-0001>
- Chaplin, E., McCarthy, J., Marshall-Tate, K., Ali, S., Xenitidis, K., Childs, J., Harvey, D., McKinnon, I., Robinson, L., Hardy, S., Srivastava, S., Allely, C. S., Tolchard, B., & Forrester, A. (2021). Evaluation of a liaison and diversion court mental health service for defendants with neurodevelopmental disorders. *Research in Developmental Disabilities*, 119, Article 104103. <https://doi.org/10.1016/j.ridd.2021.104103>
- Chaplin, E., McCarthy, J., Underwood, L., Forrester, A., Hayward, H., Sabet, J., Mills, R., Young, S., Asherson, P., & Murphy, D. (2017). Characteristics of prisoners with intellectual disabilities. *Journal of Intellectual Disability Research*, 61(12), 1185-1195. <https://doi.org/10.1111/jir.12441>
- Chiu, P., Triantafyllopoulou, P., & Murphy, G. (2020). Life after release from prison: The experience of ex-offenders with intellectual disabilities. *Journal of Applied Research in Intellectual Disabilities*, 33(4), 686-701. <https://doi.org/10.1111/jar.12661>
- Clare, I. C. H., & Gudjonsson, G. H. (1993). Interrogative suggestibility, confabulation, and acquiescence in people with mild learning disabilities (mental handicap): Implications for reliability during police interrogations. *British Journal of Clinical Psychology*, 32(3), 295-301. <https://doi.org/10.1111/j.2044-8260.1993.tb01059.x>
- Cluley, V. (2018). From “learning disability to intellectual disability” — Perceptions of the increasing use of the term “intellectual disability” in learning disability policy, research and practice. *British Journal of Learning Disabilities*, 46(1), 24-32. <https://doi.org/10.1111/bld.12209>
- Cohen, G., & Harvey, J. (2016). The use of psychological interventions for adult male sex offenders with a learning disability: A systematic review. *Journal of Sexual Aggression*, 22(2), 206-223. <https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=118194050&site=ehost-live>
- Colantonio, A., Kim, H., Allen, S., Asbridge, M., Petgrave, J., & Brochu, S. (2014). Traumatic brain injury and early life experiences among men and women in a prison population. *Journal of Correctional Health Care*, 20(4), 271-279. <https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=98397067&site=ehost-live>
- Copenhaver, A., & Tewksbury, R. (2019). Interactions between autistic individuals and law enforcement: A mixed-methods exploratory study. *American Journal of Criminal Justice*, 44(2), 309-333. <https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=135477901&site=ehost-live>
- Corporal, S. (2017). First Nations People. In K. Ellem, W. H. Chui, & J. Wilson (Eds.), *Social work and human services best practice* (pp. 185). Federation Press.
- Crowe, T. V. (2020). Factors associated with help-seeking and self-efficacy among a sample of deaf adults. *Journal of Developmental and Physical Disabilities*, 33(1), 51-63. <https://doi.org/10.1007/s10882-020-09739-9>
- Cunneen, C. & Tauri, J. (2016) *Indigenous Criminology*, Bristol: Policy Press.

- Curtis, A., McVilly, K., & Day, A. (2015). Looking for a needle in the haystack: Arsonists with intellectual disability in Australia. *Psychiatry, Psychology & Law*, 22(3), 444-452. <https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=102914837&site=ehost-live>
- Davidson, F., Heffernan, E., Greenberg, D., Waterworth, R., & Burgess, P. (2017). Mental health and criminal charges: Variation in diversion pathways in Australia. *Psychiatry, Psychology and Law*, 24(6), 888-898. <https://doi.org/10.1080/13218719.2017.1327305>
- Dias, S., Ware, R. S., Kinner, S. A., & Lennox, N. G. (2013a). Co-occurring mental disorder and intellectual disability in a large sample of Australian prisoners. *Australian and New Zealand Journal of Psychiatry*, 47(10), 938-944. <https://doi.org/10.1177/0004867413492220>
- Dias, S., Ware, R. S., Kinner, S. A., & Lennox, N. G. (2013b). Physical health outcomes in prisoners with intellectual disability: A cross-sectional study. *Journal of Intellectual Disability Research*, 57(12), 1191-1196.
- Douglas, L., & Cuskelly, M. (2012). A focus group study of police officers' recognition of individuals with intellectual disability. *Psychiatry, Psychology & Law*, 19(1), 35-44. <https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=71707939&site=ehost-live>
- Dowse, L., Dew, A., & Sewell, A. (2019). Background paper for ASID position statement on intellectual disability and complex support needs. *Research and Practice in Intellectual and Developmental Disabilities*, 6(1), 5-13. <https://doi.org/10.1080/23297018.2019.1594347>
- Dowse, L., Rowe, S., Baldry, E., & Baker, M. (2021). *Research report: Police responses to people with disability*. <https://disability.royalcommission.gov.au/system/files/2021-10/Research%20Report%20-%20Police%20responses%20to%20people%20with%20disability.pdf>
- Dowse, L. M., Rowe, S., McGillivray, J., & Newton, D. (2017). *Education, training and employment for prisoners with cognitive disabilities: A case study*. <http://dx.doi.org/10.4225/53/59f1236338e46>
- Eadens, D. M., Cranston-Gingras, A., Dupoux, E., & Eadens, D. W. (2016). Police officer perspectives on intellectual disability. *Policing: An International Journal*, 39(1), 222-235. <https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=113562173&site=ehost-live>
- Ellem, K. (2012). Experiences of leaving prison for people with intellectual disability. *Journal of Learning Disabilities & Offending Behaviour*, 3(3), 127-138. <https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=86042410&site=ehost-live>
- Ellem, K. (2019). Supporting people with cognitive disabilities in contact with the criminal justice system: The importance of relationship-based practice. *Research and Practice in Intellectual and Developmental Disabilities*, 6(2), 164-177. <https://doi.org/10.1080/23297018.2019.1629332>
- Ellem, K., Denton, M., & Davidson, D. (2020). Supporting people with intellectual and developmental disabilities leaving prison. In W. Lindsay, L. Craig, & D. Griffiths (Eds.), *What works for offenders with intellectual and developmental disabilities* (pp. 263-282). Wiley-Blackwell.
- Ellem, K., & Richards, K. (2018) Police contact with young people with cognitive disabilities: Perceptions of procedural (in)justice. *Youth Justice*, 18(3), 230-247. doi:10.1177/1473225418794357
- Ellem, K., Wilson, J., & Chui, W. H. (2012). Effective responses to offenders with intellectual disabilities: Generalist and specialist services working together. *Australian Social Work*, 65(3), 398-412. <https://doi.org/10.1080/0312407X.2011.625433>
- Eriksson, A., Saunders, B., Lansdell, G., & Bunn, R. (2019). 'Short fuse and no filter': Acquired brain injury – How a medical disability transforms into a social and criminal justice concern. *International Journal of Law, Crime & Justice*, 57, 126-136. <https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=136091366&site=ehost-live>
- Ferdinand A., Massey L., Cullen J., Temple J., Meiselbach K., Paradies Y., Baynam G., Savarirayan R. & Kelaher, M. (2021) Culturally competent communication in Indigenous disability assessment: a qualitative study, *International Journal for Equity in Health*, 20(68), 1-12.
- Fogden, B. C., Thomas, S. D. M., Daffern, M., & Ogloff, J. R. P. (2016). Crime and victimisation in people with intellectual disability: A case linkage study. *BMC (BioMedCentral) Psychiatry*, 16. <https://doi.org/10.1186/s12888-016-0869-7>
- Gatwiri, K., Rotumah, D., & Rix, E. (2021). BlackLivesMatter in healthcare: Racism and implications for health inequity among Aboriginal and Torres Strait Islander peoples in Australia. *International Journal of Environmental Research and Public Health*, 18(9), 4399. <https://doi.org/10.3390/ijerph18094399>
- Gausel, N., & Thørrisen, M. M. (2014). A theoretical model of multiple stigma: Ostracized for being an inmate with intellectual disabilities. *Journal of Scandinavian Studies in Criminology & Crime Prevention*, 15(1), 89-95. <https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=95447180&site=ehost-live>
- Geia, L. K., Hayes, B., & Usher, K. (2013). Yarning/Aboriginal storytelling: Towards an understanding of an Indigenous perspective and its implications for research practice. *Contemporary Nurse: A Journal for the Australian Nursing Profession*, 46(1), 13-17. <https://doi.org/10.5172/conu.2013.46.1.13>

- Giblin, Y., Kelly, A., Kelly, E., Kennedy, H. G., & Mohan, D. (2012). Reducing the use of seclusion for mental disorder in a prison: Implementing a high support unit in a prison using participant action research. *International Journal of Mental Health Systems*, 6, 2. <https://doi.org/10.1186/1752-4458-6-2>
- Gooda, M. (2012) Mental illness and cognitive disability in Aboriginal and Torres Strait Islander prisoners – a human rights approach, *Paper presented at 22nd Annual THEMHS Conference*, Cairns, 23 August.
- Gooding, P., Arstein-Kerslake, A., Andrews, L., & McSherry, B. (2017). Unfitness to stand trial and the indefinite detention of persons with cognitive disabilities in Australia: Human rights challenges and proposals for change. *Melbourne University Law Review*, 40(3), 816-866. <https://doi.org/10.3316/ielapa.979440577947219>
- Goodley, D., Lawthorn, R., Liddiard, K., & Runswick-Cole, K. (2019). Provocations for Critical Disability Studies. *Disability & Society*, 34(6), 972-997. <https://doi.org/10.1080/09687599.2019.1566889>
- Gorgens, K. A., Meyer, L., Dettmer, J., Standeven, M., Goodwin, E., Marchi, C., & Lyman, H. (2021). Traumatic brain injury in community corrections: Prevalence and differences in compliance and long-term outcomes among men and women on probation. *Criminal Justice & Behavior*, 48(12), 1679-1693. <https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=153129676&site=ehost-live>
- Gormley, C. (2022). Hidden harms of prison life for people with learning disabilities. *British Journal of Criminology*, 62(2), 261-278. <https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=155335053&site=ehost-live>
- Griffiths, S. L., Wood, S. J., & Birchwood, M. (2019). Vulnerability to psychosocial disability in psychosis. *Epidemiology and Psychiatric Sciences*, 28(2), 140-145. <https://doi.org/10.1017/S2045796018000495>
- Gulati, G., Cusack, A., Kilcommins, S., & Dunne, C. P. (2020). Intellectual disabilities in Irish prisons: Could Article 13 of the UNCRPD hold the key? *International Journal of Law and Psychiatry*, 68, 101540. <https://doi.org/10.1016/j.ijlp.2019.101540>
- Gulati, G., Kelly, B. D., Cullen, W., Kukaswadia, S., Cusack, A., Kilcommins, S., & Dunne, C. P. (2021). What is the role of doctors in respect of suspects with mental health and intellectual disabilities in police custody? *Irish Journal of Psychological Medicine, First View*, 1-6. <https://doi.org/10.1017/ipm.2021.25>
- Gulati, G., Quigley, S., Murphy, V. E., Yacoub, E., Bogue, J., Kearns, A., O'Neill, C., Kelly, M., Morrison, A., Griffin, G., Blewitt, M., Fistein, E., Meagher, D., Dunne, C. P., & O'Neill, C. (2018). A novel care pathway for prisoners with intellectual disability designed through a Delphi process. *International Journal of Prisoner Health*, 14(4), 276-286. <https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=133160817&site=ehost-live>
- Gunasekaran, S., & Chaplin, E. (2012). Autism spectrum disorders and offending. *Advances in Mental Health and Intellectual Disabilities*, 6(6), 308-313. <https://doi.org/10.1108/20441281211285955>
- Halsey, M., & De Vel-Palumbo, M. (2020). *Generations through prison: Experiences of intergenerational incarceration*. Routledge.
- Hayes, L., Brophy, L., Harvey, C., Tellez, J. J., Herrman, H., & Killackey, E. (2018). Enabling choice, recovery and participation: evidence-based early intervention support for psychosocial disability in the National Disability Insurance Scheme. *Australasian Psychiatry*, 26(6), 578-585. <https://doi.org/10.1177/1039856218759407>
- Hayes, S. C., & Craddock, G. (1992). *Simply criminal* (2nd ed.). Federation Press.
- Heffernan, E. (2016). *The mental health of Aboriginal and Torres Strait Islander people in custody*. [Doctoral dissertation, University of Queensland]. UQ eSpace. <https://espace.library.uq.edu.au/view/UQ:400903>
- Helverschou, S. B., Rasmussen, K., Steindal, K., Søndanaa, E., Nilsson, B., & Nøttestad, J. A. (2015). Offending profiles of individuals with autism spectrum disorder: A study of all individuals with autism spectrum disorder examined by the forensic psychiatric service in Norway between 2000 and 2010. *Autism*, 19(7), 850-858. <https://doi.org/10.1177/1362361315584571>
- Helverschou, S. B., Steindal, K., Nøttestad, J. A., & Howlin, P. (2018). Personal experiences of the criminal justice system by individuals with autism spectrum disorders. *Autism*, 22(4), 460-468. <https://doi.org/10.1177/1362361316685554>
- Herrington, V., & Roberts, K. (2012). Addressing psychological vulnerability in the police suspect interview. *Policing: A Journal of Policy & Practice*, 6(2), 177-186. <https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=75728510&site=ehost-live>
- Higham, L., Girardi, A., & Edwards, H. V. (2021). Clinical and criminal profile of internet offenders with ASD. *Journal of Intellectual Disabilities and Offending Behaviour*, 12(2), 61-74. <https://doi.org/10.1108/JIDOB-09-2020-0016>
- Holland, L., Reid, N., & Smirnov, A. (2021). Neurodevelopmental disorders in youth justice: a systematic review of screening, assessment and interventions. *Journal of Experimental Criminology*. <https://doi.org/10.1007/s11292-021-09475-w>

- Hollomotz, A., & Talbot, J. (2021). Designing solutions for improved support within health, social care and criminal justice for adults with learning disabilities and/or autism who have offended. *The Howard Journal of Crime and Justice*, 60(2), 185-208. <https://doi.org/10.1111/hojo.12414>
- Holloway, C. A., Munro, N., Jackson, J., Phillips, S., & Ropar, D. (2020). Exploring the autistic and police perspectives of the custody process through a participative walkthrough. *Research in Developmental Disabilities*, 97, Article 103545. <https://doi.org/10.1016/j.ridd.2019.103545>
- Horn, M. L., & Lutz, D. J. (2016). Traumatic brain injury in the criminal justice system: Identification and response to neurological trauma. *Applied Psychology in Criminal Justice*, 12(2), 71-86. <https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=120395029&site=ehost-live>
- Human Rights Watch. (2018). *"I needed help, instead I was punished": Abuse and neglect of prisoners with disabilities in Australia*. https://www.hrw.org/sites/default/files/report_pdf/australia0218_web.pdf
- Jonathan-Zamir T., Mastrofski S., Moyal, S. (2015) Measuring procedural justice in police-citizen encounters. *Justice Quarterly* 32, 845–871
- Jones, E., & Chaplin, E. (2020). A systematic review of the effectiveness of psychological approaches in the treatment of sex offenders with intellectual disabilities. *Journal of Applied Research in Intellectual Disabilities*, 33(1), 79-100. <https://doi.org/10.1111/jar.12345>
- Killackey, E., Harvey, C., Amering, M., & Herman, H. (2015). Partnerships for meaningful community living: Rehabilitation and recovery-informed practices. In A. Tasman, J. Kay, & J. Lieberman (Eds.), *Psychiatry* (pp. 1959-1982). John Wiley and Sons Ltd.
- Krug, A., & McNutt, L. A. (2008). Encyclopedia of epidemiology. In. SAGE Publications, Inc. <https://doi.org/10.4135/9781412953948>
- Lahm, K. (2016). Official incidents of inmate-on-inmate misconduct at a women's prison: Using importation and deprivation theories to compare perpetrators to victims. *Criminal Justice Studies*, 29(3), 214-231. <https://doi.org/10.1080/1478601X.2016.1154263>
- Lansdell, G., Saunders, B., Eriksson, A., Bunn, R., & Baidawi, S. (2018a). Enhancing the rights and well-being of people with acquired brain injuries in the criminal justice system: Some findings from a qualitative study. *Australian Journal of Social Issues*, 53(2), 88-106. <https://doi.org/10.1002/ajs4.41>
- Lansdell, G., Saunders, B., Eriksson, A., Bunn, R., & Baidawi, S. (2018b). 'I am not drunk, I have an ABI': Findings from a qualitative study into systematic challenges in responding to people with acquired brain injuries in the justice system. *Psychiatry, Psychology & Law*, 25(5), 737-758. <https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=133227240&site=ehost-live>
- Lansdell, G. T., Saunders, B. J., Eriksson, A., & Bunn, R. (2022). Strengthening the connection between acquired brain injury (ABI) and family violence: The importance of ongoing monitoring, research and inclusive terminology. *Journal of Family Violence*, 37(2), 367-380. <https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=155024159&site=ehost-live>
- Law Council of Australia. (2018a). *The justice project - Final report part 1: People with disability* <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/People%20with%20Disability%20%28Part%201%29.pdf>
- Law Council of Australia. (2018b). *The justice project - Final report part 2: Broader justice system players*. <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Broader%20Justice%20System%20Players%20%28Part%202%29.pdf>
- Law Council of Australia. (2020). *The criminal justice system – Issues paper: Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*. <https://www.lawcouncil.asn.au/resources/submissions/the-criminal-justice-system-issues-paper>
- Laws, B. (2022). *Caged emotions: Adaptation, control and solitude in prison*. Palgrave Macmillan.
- Ledger, S., McCormack, N., Walmsley, J., Tilley, E., & Davies, I. (2022). "Everyone has a story to tell": A review of life stories in learning disability research and practice. *British Journal of Learning Disabilities*, 50(4), 484-493. <https://doi.org/10.1111/bld.12388>
- Leonard, P., Morrison, A., Delany-Warner, M., & Calvert, G. J. (2016). A national survey of offending behaviour amongst intellectually disabled users of mental health services in Ireland. *Irish Journal of Psychological Medicine*, 33(4), 207-215. <https://doi.org/10.1017/ipm.2015.21>
- Lewis, A., Foster, M., Hughes, C., & Turner, K. (2016). Improving the management of prisoners with autistic spectrum disorders (ASD). *Prison Service Journal*, 226, 22-26. <https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=117115130&site=ehost-live>
- Linden, M. A., O'Rourke, C., Monaghan, C., & Rainey, D. (2021). Experiences of offenders with traumatic brain injury. *Brain Impairment*, 22(1), 108-123. <https://doi.org/10.1017/BrImp.2020.23>
- Lindsay, W., Sturmey, P., & Taylor, J. L. (2004). Natural history and theories of offending in people with developmental disabilities. In W. Lindsay, J. L. Taylor, & P. Sturmey (Eds.), *Offenders with developmental disabilities* (pp. 3-22). John Wiley and Sons.

- Lindsay, W. R., Carson, D., Holland, A. J., Taylor, J. L., O'Brien, G., Wheeler, J. R., & Steptoe, L. (2013). Alcohol and its relationship to offence variables in a cohort of offenders with intellectual disability. *Journal of Intellectual and Developmental Disability*, 38(4), 325-331. <https://doi.org/10.3109/13668250.2013.837154>
- Lofthouse, R. E., Golding, L., Totsika, V., Hastings, R. P., & Lindsay, W. R. (2020). Predicting aggression in adults with intellectual disability: A pilot study of the predictive efficacy of the Current Risk of Violence and the Short Dynamic Risk Scale. *Journal of Applied Research in Intellectual Disabilities*, 33(4), 702-710. <https://doi.org/10.1111/jar.12665>
- Lumsden, K., & Black, A. (2022). 'Sorry, I'm dead, it's too late now': Barriers faced by D/deaf citizens when accessing police services. *Disability & Society*, 37(3), 476-495. <https://doi.org/10.1080/09687599.2020.1829555>
- Luteijn, I., VanDerNagel, J. E. L., van Duijvenbode, N., de Haan, H. A., Poelen, E. A. P., & Didden, R. (2020). Post-traumatic stress disorder and substance use disorder in individuals with mild intellectual disability or borderline intellectual functioning: A review of treatment studies. *Research in Developmental Disabilities*, 105, Article 103753. <https://doi.org/10.1016/j.ridd.2020.103753>
- Marchetti, E. & Daly, K. (2004) Indigenous courts and justice practices in Australia, *Trends & Issues in Crime and Criminal Justice*, No. 277, Canberra: Australian Institute of Criminology.
- Marinos, V., Robinson, J., Gosse, L., Fergus, C., Griffiths, D., Stromski, S., & Rondeau, K. (2017). Persons with intellectual disabilities and the criminal justice system: A view from criminal justice professionals in Ontario. *Criminal Law Quarterly (Toronto)*, 64(1-2), 83-107.
- Marshall-Tate, K., Chaplin, E., McCarthy, J., & Grealish, A. (2020). A literature review about the prevalence and identification of people with an intellectual disability within court liaison and diversion services. *Journal of Intellectual Disabilities and Offending Behaviour*, 11(3), 159-169. <https://doi.org/10.1108/JIDOB-10-2019-0023>
- McCarthy, J., Chaplin, E., Forrester, A., Underwood, L., Hayward, H., Sabet, J., Young, S., Mills, R., Asherson, P., & Murphy, D. (2019). Prisoners with neurodevelopmental difficulties: Vulnerabilities for mental illness and self-harm. *Criminal Behaviour & Mental Health*, 29(5/6), 308-320. <https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=141095543&site=ehost-live>
- McCarthy, J., Chaplin, E., Underwood, L., Forrester, A., Hayward, H., Sabet, J., Young, S., Asherson, P., Mills, R., & Murphy, D. (2016). Characteristics of prisoners with neurodevelopmental disorders and difficulties. *Journal of Intellectual Disability Research*, 60(3), 201-206. <https://doi.org/10.1111/jir.12237>
- McCausland, R., & Baldry, E. (2017). 'I feel like I failed him by ringing the police': Criminalising disability in Australia. *Punishment & Society*, 19(3), 290-309. <https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=123600342&site=ehost-live>
- McDonald, H., Wilson, A., Wei, Z., Randell, S., & Forell, S. (2017). *In summary: Evaluation of the appropriateness and sustainability of Victoria legal aid's summary crime program*. Law and Justice Foundation of New South Wales. <https://nla.gov.au/nla.obj-2491416632/view>
- McGillivray, J. A., Gaskin, C. J., Newton, D. C., & Richardson, B. A. (2016). Substance use, offending, and participation in alcohol and drug treatment programmes: A comparison of prisoners with and without intellectual disabilities. *Journal of Applied Research in Intellectual Disabilities*, 29(3), 289-294. <https://doi.org/10.1111/jar.12175>
- McGillivray, J. A., & Newton, D. C. (2016). Self-reported substance use and intervention experience of prisoners with intellectual disability. *Journal of Intellectual and Developmental Disability*, 41(2), 166-176. <https://doi.org/10.3109/13668250.2016.1146944>
- McGuire, M. (2012). *Breaking the cycle: Using advocacy-based referrals to assist people with disabilities in the criminal justice system*. Office of the Public Advocate.
- McKinnon, I., & Finch, T. (2018). Contextualising health screening risk assessments in police custody suites – qualitative evaluation from HELP-PC study in London, UK. *BMC Public Health*, 18 (1), 392-406. DOI: 10.1186/s12889-018-5271-6
- McLean, S. & McDougall, S. (2014). *Fetal alcohol spectrum disorders: current issues in awareness, prevention and intervention*. <https://apo.org.au/sites/default/files/resource-files/2014-12/apo-nid42605.pdf>
- McSherry, B., Baldry, E., Arnstein-Kerslake, Gooding, P., McCausland, R., & Arabena, K. (2017). *Unfitness to plead and indefinite detention of persons with cognitive disabilities: Addressing the legal barriers and creating appropriate alternative supports in the community* https://socialequity.unimelb.edu.au/_data/assets/pdf_file/0009/2598507/Unfitness-to-Plead.pdf
- Minick, D. (2020). Intellectually or developmentally disabled in jail: The need for reform in Texas jails. *Thomas Jefferson Law Review*, 42(2), 86-124. <https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=143624625&site=ehost-live>
- Murphy, G. H., Chiu, P., Triantafyllopoulou, P., Barnoux, M., Blake, E., Cooke, J., Forrester-Jones, R. V. E., Gore, N. J., & Beecham, J. K. (2017). Offenders with intellectual disabilities in prison: What happens

- when they leave? *Journal of Intellectual Disability Research*, 61(10), 957-968. <https://doi.org/10.1111/jir.12374>
- Murphy, K. (2015) Does procedural justice matter to youth? Comparing adults' and youths' willingness to collaborate with police. *Policing and Society* 25, 53–76.
- National Agreement on Closing the Gap (2020) *Closing the Gap in Partnership*, <https://www.closingthegap.gov.au/national-agreement>.
- National Disability Insurance Agency. (2018, 16/11/2018). *Improved NDIS planning for people with complex support needs* <https://www.ndis.gov.au/news/1002-improved-ndis-planning-people-complex-support-needs>
- Newman, C., Cashin, A., & Graham, I. (2019). Identification of service development needs for incarcerated adults with autism spectrum disorders in an Australian prison system. *International Journal of Prisoner Health*, 15(1), 24-36. <https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=135047015&site=ehost-live>
- Office of the Public Advocate. (2012). *Breaking the cycle: Using advocacy-based referrals to assist people with disabilities in the criminal justice system*. https://www.publicadvocate.vic.gov.au/joomlatools-files/docman-files/research-item/Breaking_the_cycle_report.pdf
- Office of the Public Advocate. (2021a). *Submission to the Legal and Social Issues Committee: Inquiry into Victoria's criminal justice system*. https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System/_Submissions/153._Office_of_the_Public_Advocate_Redacted.pdf
- Office of the Public Advocate. (2021b). *Submission: Cultural review of the adult custodial corrections system*. <https://www.publicadvocate.vic.gov.au/opa-s-work/submissions/413-submission-on-cultural-review-of-the-adult-custodial-corrections-system>
- Pagel, T., Franklin, J., & Baethge, C. (2014). Schizoaffective disorder diagnosed according to different diagnostic criteria – systematic literature search and meta-analysis of key clinical characteristics and heterogeneity. *Journal of Affective Disorders*, 156, 111-118. <https://doi.org/10.1016/j.jad.2013.12.001>
- Parter, C., & Wilson, S. (2021). My research is my story: a methodological framework of inquiry told through storytelling by a Doctor of Philosophy Student. *Qualitative Inquiry*, 27(8-9), 1084-1094. <https://doi.org/10.1177/1077800420978759>
- Payne, J. (2022). Practitioner Perspective: Murri Court. In M. Camilleri & A. Harkness (Eds.), *Australian Courts: Controversies, Challenges and Change* (pp. 238-246). Palgrave Macmillan.
- Payne, K., Maras, K. L., Russell, A. J., Brosnan, M. J., & Mills, R. (2020). Self-reported motivations for engaging or declining to engage in cyber-dependent offending and the role of autistic traits. *Research in Developmental Disabilities*, 104, 103681. <https://doi.org/10.1016/j.ridd.2020.103681>
- Post, M., Storey, K., Haymes, L., Campbell, C., & Loughrey, T. (2014). Stalking behaviors by individuals with autism spectrum disorders in employment settings: Understanding stalking behavior and developing appropriate supports. *Education and Training in Autism and Developmental Disabilities*, 49(1), 102-110. <https://www.proquest.com/scholarly-journals/stalking-behaviors-individuals-with-autism/docview/1503770396/se-2?accountid=14723>
- Queensland Advocacy Incorporated. (2015). *dis-Abled Justice: Reforms to justice for persons with disability in Queensland*. Queensland Advocacy Incorporated.
- Queensland Government. (2012). *Inside Out - The Mental Health of Aboriginal and Torres Strait Islander People in Custody Report*. Queensland Government.
- Queensland Government. (2016). *Queensland Parole System Review: Final Report November 2016*. Queensland Government.
- Queensland Productivity Commission. (2019). *Final Report: Inquiry into Imprisonment and Recidivism*. Queensland Government.
- Queensland Productivity Commission. (2021). *Final Report: The NDIS market in Queensland*. Queensland Government.
- Quinn, S., & Rance, G. (2009). The extent of hearing impairment amongst Australian Indigenous prisoners in Victoria, and implications for the correctional system. *International Journal of Audiology*, 48(3), 123-134. <https://doi.org/10.1080/14992020802516558>
- Race, L., & Hogue, T. E. (2018). 'You have the right to remain silent'. *Police Journal*, 91(1), 64-88. <https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=128478514&site=ehost-live>
- Railey, K. S., Love, A. M. A., & Campbell, J. M. (2021). A scoping review of autism spectrum disorder and the criminal justice system. *Review Journal of Autism and Developmental Disorders*, 8(1), 118-144. <https://doi.org/10.1007/s40489-020-00203-0>

- Ramos, S. D. S., Oddy, M., Liddement, J., & Fortescue, D. (2018). Brain injury and offending: The development and field testing of a linkworker intervention. *International Journal of Offender Therapy and Comparative Criminology*, 62(7), 1854-1868. <https://doi.org/https://doi.org/10.1177/0306624X17708351>
- Ray, I., Simpson, A. I. F., Jones, R. M., Shatokhina, K., Thakur, A., & Mulsant, B. H. (2019). Clinical, demographic, and criminal behavior characteristics of patients with intellectual disabilities in a Canadian forensic program. *Frontiers in Psychiatry*, 10, Article 760. <https://doi.org/10.3389/fpsyt.2019.00760>
- Rice, T. (2016). Sounds inside: Prison, prisoners and acoustical agency. *Sound Studies*, 2(1), 6-20. <https://doi.org/10.1080/20551940.2016.1214455>
- Ringland, C., Boiteux, S., & Poynton, S. (2022). Trends in rates of victimisation and offending for people with disability in NSW. *NSW Bureau of Crime Statistics and Research. Number 163*. <https://www.bocsar.nsw.gov.au/Publications/BB/BB163-Report-Trends-in-rates-of-victimisation.pdf>
- Robertson, C. E., & McGillivray, J. A. (2015). Autism behind bars: A review of the research literature and discussion of key issues. *Journal of Forensic Psychiatry & Psychology*, 26(6), 719-736. <https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=110591570&site=ehost-live>
- Robertson, J., Emerson, E., Baines, S., & Hatton, C. (2020). Self-reported smoking, alcohol and drug use among adolescents and young adults with and without mild to moderate intellectual disability. *Journal of Intellectual & Developmental Disability*, 45(1), 35-45. <https://doi.org/10.3109/13668250.2018.1440773>
- Rowe, S., Dowse, L., Newton, D., McGillivray, J., & Baldry, E. (2020). Addressing education, training, and employment supports for prisoners with cognitive disability: Insights from an Australian programme. *Journal of Policy and Practice in Intellectual Disabilities*, 17(1), 43-50. <https://doi.org/10.1111/jppi.12321>
- Royal Commission into Violence Abuse Neglect and Exploitation of People with Disability. (2020). *Overview of responses to the Criminal justice system Issues paper*. <https://disability.royalcommission.gov.au/system/files/2022-03/Overview%20of%20responses%20to%20the%20Criminal%20justice%20system%20Issues%20paper.pdf>
- Royal Commission into Violence Abuse Neglect and Exploitation of People with Disability. (2021). *Overview of responses to the Experience of First Nations people with disability in Australia Issues paper*. <https://disability.royalcommission.gov.au/system/files/2022-03/Overview%20of%20responses%20to%20the%20Experience%20of%20First%20Nations%20people%20with%20disability%20in%20Australia%20Issues%20paper.pdf>
- Russell, D., Chovaz, C., & Boudreault, P. (2018). *Administration of justice: The experience of Deaf, DeafBlind, and Deaf people with additional disabilities in accessing the justice system*. Canadian Association of the Deaf.
- Ryan N., Head B., Keast R.L., & Brown, K.A. (2006) Engaging Indigenous communities: Towards a policy framework for Indigenous community justice programs, *Social Policy & Administration*, 40(3), 304-321.
- Salerno-Ferraro, A. C., & Schuller, R. A. (2020). Perspectives from the ASD community on police interactions: Challenges & recommendations. *Research in Developmental Disabilities*, 105, Article 103732. <https://doi.org/10.1016/j.ridd.2020.103732>
- Schalock, R. L., Borthwick-Duffy, S. A., Bradley, V. J., Buntinx, W. H., Coulter, D. L., Craig, E. M., Gomez, S. C., Lachapelle, Y., Luckasson, R., & Reeve, A. (2010). *Intellectual disability: Definition, classification, and systems of supports*. American Association on Intellectual Disabilities.
- Shepherd, S. M., Ogloff, J. R. P., Paradies, Y., & Pfeifer, J. (2017). Aboriginal prisoners with cognitive impairment: Is this the highest risk group? *Trends & Issues in Crime & Criminal Justice* (536), 1-14. <https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=125844870&site=ehost-live>
- Shogren, K., Wehmeyer, M., Martinis, J., & Blanck, P. (2018). Introduction to Supported Decision-Making and Its Emergence in the Disability Field. In J. Martinis, K. A. Shogren, M. L. Wehmeyer, & P. Blanck (Eds.), *Supported Decision-Making: Theory, Research, and Practice to Enhance Self-Determination and Quality of Life* (pp. 3-26). Cambridge University Press. <https://doi.org/DOI:10.1017/9781108633314.002>
- Slavny-Cross, R., Allison, C., Griffiths, S., & Baron-Cohen, S. (2022). Autism and the criminal justice system: An analysis of 93 cases. *Autism Research*, 15(5), 904-914. <https://doi.org/10.1002/aur.2690>
- Smith, L. T. (2021). *Decolonizing methodologies: Research and indigenous peoples* (Third edition). Zed Books.
- Sofronoff, W. (2016). *Queensland Parole System Review: Final Report November 2016*. <https://parolereview.premiers.qld.gov.au/assets/queensland-parole-system-review-final-report.pdf>

- Spivakovsky, C. (2013). *Racialized correctional governance: The mutual constructions of race and criminal justice*. Routledge. <https://doi.org/10.4324/9781315603421>
- Spivakovsky, C. (2021). Barriers to the NDIS for people with intellectual disability and/or complex support needs involved with the criminal justice systems: The current state of literature. *Journal of Intellectual and Developmental Disability*, 46(4), 329-339. <https://doi.org/10.3109/13668250.2020.1855695>
- Steele, L., Dowse, L., & Trofimovs, J. (2013). *Section 32: A report on the human service and criminal pathways of people diagnosed with mental health disorder and cognitive disability in the criminal justice system who have received orders under the Mental Health (Forensic Provisions) Act 1990 (NSW)*. <https://ro.uow.edu.au/lhapapers/529/>
- Stewart, M., & Glowatski, K. (2014). Front-line police perceptions of fetal alcohol spectrum disorder in a Canadian province. *Police Journal*, 87(1), 17-27. <https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=95886262&site=ehost-live>
- Sykes, G. M. (1958). *The society of captives: A study of a maximum security prison*. Princeton University Press.
- Taylor, J. (2021). Compassion in custody: Developing a trauma sensitive intervention for men with developmental disabilities who have convictions for sexual offending. *Advances in Mental Health and Intellectual Disabilities*, 15(5), 185-200. <https://doi.org/10.1108/AMHID-01-2021-0004>
- Thapar, A. P., Cooper, M. M., & Rutter, M. P. (2017). Neurodevelopmental disorders. *Lancet Psychiatry*, 4(4), 339-346. [https://doi.org/10.1016/S2215-0366\(16\)30376-5](https://doi.org/10.1016/S2215-0366(16)30376-5)
- The Myuma Group. (2021). *Phase 1 Report: Evaluation of Community Justice Groups*. https://www.courts.qld.gov.au/_data/assets/pdf_file/0011/738974/cjg-evaluation-annual-report.pdf
- Teasell, R., Bayona, N., Marshall, S., Cullen, N., Bayley, M., Chundamala, J., Villamere, J., Mackie, D., Rees, L., Hartridge, C., Lippert, C., Hilditch, M., Welch-West, P., Weiser, M., Ferri, C., McCabe, P., McCormick, A., Aubut, J.-A., Comper, P., ... Tu, L. (2007). A systematic review of the rehabilitation of moderate to severe acquired brain injuries. *Brain Injury*, 21(2), 107-112. <https://doi.org/10.1080/02699050701201524>
- Toombs, M. (2016). The intersection between research and ethics, as it applies to indigenous methodologies. *Aboriginal and Islander Health Worker Journal*, 40, 8-10
- Trofimovs, J., & Dowse, L. (2014). Mental health at the intersections: The impact of complex needs on police contact and custody for Indigenous Australian men. *International Journal of Law and Psychiatry*, 37(4), 390-398. <https://doi.org/10.1016/j.ijlp.2014.02.010>
- Trofimovs, J., Dowse, L., Srasuebkul, P., & Trollor, J. N. (2021). Using linked administrative data to determine the prevalence of intellectual disability in adult prison in New South Wales, Australia. *Journal of Intellectual Disability Research*, 65(6), 589-600. <https://doi.org/10.1111/jir.12836>
- Tubex, H., Rynne, J., & Blagg, H. (2021). Throughcare for Indigenous peoples leaving prison: Practices in two settler colonial states. *European Journal of Probation*, 13(3), 282-300. <https://doi.org/10.1177/20662203211044956>
- Tyler T., Goff, P., Maccoun, R. (2015) The impact of psychological science on policing in the United States: Procedural justice, legitimacy, and effective law enforcement. *Psychological Science in the Public Interest* 16, 75-109.
- United Nations. (2007). United Nations Declaration on the Rights of Indigenous Peoples. <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>
- United Nations Office on Drugs and Crime. (2023). *Integrated approaches to challenges facing the criminal justice system*. <https://www.unodc.org/lpo-brazil/en/crime/challenges-facing-the-criminal-justice-system.html>
- Vereenoghe, L., & Langdon, P. E. (2013). Psychological therapies for people with intellectual disabilities: A systematic review and meta-analysis. *Research in Developmental Disabilities*, 34(11), 4085-4102. <https://doi.org/10.1016/j.ridd.2013.08.030>
- Viljoen, E., Bornman, J., Wiles, L., & Tönsing, K. M. (2017). Police officer disability sensitivity training: A systematic review. *The Police Journal*, 90(2), 143-159. <https://doi.org/10.1177/0032258x16674021>
- Vinson T, Rawthorne M, Beavis A & Ericson M (2015) *Dropping off the edge 2015: Persistent communal disadvantage in Australia*, Richmond, VIC: Jesuit Social Services.
- Vinter, L. P., Dillon, G., & Winder, B. (2020). 'People don't like you when you're different': Exploring the prison experiences of autistic individuals. *Psychology, Crime & Law*, Latest Articles. <https://doi.org/10.1080/1068316X.2020.1781119>
- Wallace, D., Herbert, J., Tyler, D., & McGee-Hassrick, E. (2021). Interactions between individuals on the autism spectrum and the police: The fears of parents, caregivers, and professionals. *Policing: A*

- Journal of Policy & Practice*, 15(2), 950-964.
<https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=152135576&site=ehost-live>
- Whittingham, L., Durbin, A., Lin, E., Matheson, F. I., Volpe, T., Dastoori, P., Calzavara, A., Lunskey, Y., & Kouyoumdjian, F. (2020). The prevalence and health status of people with developmental disabilities in provincial prisons in Ontario, Canada: A retrospective cohort study. *Journal of Applied Research in Intellectual Disabilities*, 33(6), 1368-1379. <https://doi.org/10.1111/jar.12757>
- Wieland, J., & Zitman, F. G. (2016). It is time to bring borderline intellectual functioning back into the main fold of classification systems. *BJPsych Bulletin*, 40(4), 204-206. <https://doi.org/10.1192/pb.bp.115.051490>
- World Health Organisation. (2017). *International Classification of Diseases (ICD-11) Beta Draft*. <https://icd.who.int/en>
- Wu, T., Singh, S., Lyons, G., Nielssen, O., Kemp, R., Johnson, A., & Dean, K. (2021). Characteristics and re-offending outcomes of limiting-term forensic patients found unfit to stand trial in New South Wales, Australia. *Psychiatry, psychology and law* 28(5), 733-747. <https://doi.org/10.3316/cinch.130926036>
- Young, J. T., van Dooren, K., Claudio, F., Cumming, C., & Lennox, N. (2016). Transition from prison for people with intellectual disability: A qualitative study of service professionals. *Trends & Issues in Crime & Criminal Justice* (528), 1-12.
<https://search.ebscohost.com/login.aspx?direct=true&db=cja&AN=121709495&site=ehost-live>
- Young, S., González, R. A., Mullens, H., Mutch, L., Malet-Lambert, I., & Gudjonsson, G. H. (2018). Neurodevelopmental disorders in prison inmates: Comorbidity and combined associations with psychiatric symptoms and behavioural disturbance. *Psychiatry Research*, 261, 109-115. <https://doi.org/10.1016/j.psychres.2017.12.036>
- Young, S., Gudjonsson, G., Chitsabesan, P., Colley, B., Farrag, E., Forrester, A., Hollingdale, J., Kim, K., Lewis, A., Maginn, S., Mason, P., Ryan, S., Smith, J., Woodhouse, E., & Asherson, P. (2018). Identification and treatment of offenders with attention-deficit/hyperactivity disorder in the prison population: A practical approach based upon expert consensus. *BMC Psychiatry*, 18(1), 281-281. <https://doi.org/10.1186/s12888-018-1858-9>
- Zidenberg, A. M. (2021). Avoiding the deaf penalty: A review of the experiences of d/Deaf individuals in the criminal justice system. *Disability & Society*, Latest Articles.
<https://doi.org/10.1080/09687599.2021.1965546>

11. Appendices

11.1 Appendix One: Participants with disability

Pseudonym	Disability	Cultural background/ ethnicity	Gender	Age	Location	Experience in the criminal justice system
GT	Psychosocial	Not disclosed	Male	Not disclosed	Metro	Police, legal support, court
Frederick	Intellectual	Aboriginal	Non-binary	58	Metro	Police, court
Amethyst (interview with mother Agnes)	Intellectual, autism and psychosocial	Aboriginal	Female	31	Regional	Police, court
Robert	Drug induced psychosis, schizophrenia; ADHD	Aboriginal	Male	26	Regional	Police, legal support, court
DT	Cerebral Palsy; borderline personality disorder; suicidal ideation; anxiety; depression	Aboriginal	Male	29	Regional	Police, legal support, court
Junior	ADHD; Aspergers, anxiety, depression	Aboriginal	Male	23	Regional	Police, legal support
IB	Intellectual	Aboriginal & Torres Strait Islander	Male	Mid 30s	Regional	Police, court, community corrections
PW	Multiple & significant physical impairments; PTSD	Aboriginal	Male	Mid 60s	Rural	Police
JA	Cognitive; psychosocial disability	White Australian	Male	25	Metro	Police, legal support, court, community corrections

Michael	PTSD, anxiety, depression	White Australian	Male	40	Metro	Prison
Bear	PTSD, anxiety, depression	Aboriginal	Male	64	Metro	Legal support, prison
Reggie Juggernaut	Degenerative spine, tumours in spine; complex trauma	White Australian	Male	47	Metro	Police, legal support, court, prison, post release

REVIEWED REPORT

11.2 Appendix Two: Interview Guide for Participants with Disability

1. Introduction

- Interviewer introduces self, provides overview of project & interview process
- Shows personal example of life map if appropriate
- Opportunity for participant to ask interviewer questions about the project
- Consent process
- Reminder that:
 - No right or wrong answers
 - Participant can choose to take a break or stop the interview at any time.
- Interviewer explains about pseudonym or “pretend name”, gives example of pseudonym would use for his or herself
- Ask person if they would like to choose a pretend name – this is one way the interviewer can help the person see that their personal details/experiences will be de-identified
- Check with person if it is okay to record the interview.

Note that the questions listed below are a guide only. The order in which questions are asked, the prompts used, and the exact phrasing of the questions will vary in accordance with how the participants engage in the interview process.

2. Demographic/opening questions

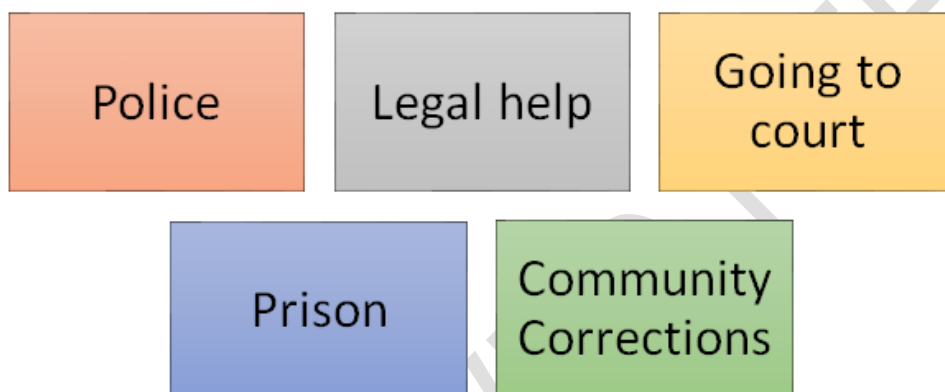
- Age
- Gender identity
- Cultural background
- Current living situation
- This research is talking to people with disability who have been in contact with the Queensland criminal justice system, that is police, courts, prison, community corrections.
 - Can you describe to me what your disability is in your own words?
 - What kind of supports do you need because of your disability?

3. Life map drawing

- Interviewer shows personal example of life map again, give person a choice to draw their life map
- Invites person to discuss life experiences to date – interviewer draws life map (if participant agrees) and asks general questions about:
 - Where born
 - Where lived
 - Who they lived with
 - Where went to school
 - Finding a job and working (if applicable)
 - Important events to person

- Contacts with Queensland criminal justice system *(to be explored more in-depth later in the interview)*:
 - Police
 - Going to court *(if applicable)*
 - Going to prison *(if applicable)*
 - Leaving prison *(if applicable)*
 - Community corrections *(if applicable)*
- Life now

Explain to person that we are interested in finding out about what the Queensland criminal justice system is like for people with disability. Using the life map as a guide, or based on participant's account, the topics below can be explored. Allow the participant to choose what topics they would like to talk about (**start with two that are most important to the person**, and if there is time can explore other topics):



4. Contact with police

- Can you tell me about how much experience you have had with police? What were those experiences like for you?

Themes to explore:

- Talking with and understanding police (e.g. understanding paperwork, police instruction)
- Police knowledge and response to disability, cultural background, gender identity (where relevant)
- Getting help from police or other people (e.g. having a support person present in interview)
- Staying in a watch house (e.g. access to medication, asking for help)

Overall thoughts on police and sharing information

- What information did police get from you? Did they give you any warnings about telling them information? What did they do with the information you gave them?
- Was there anything you didn't want to share with police? Did you end up sharing things you didn't want to share?
- What information do police need about people with disability? Who should give them this information?
- What information shouldn't be shared with police?
- What would make things better for people with disability in contact with police?

5. Getting legal advice

- Can you tell me about how much experience you have had with lawyers? What were those experiences like for you?

Themes to explore:

- Finding and talking to a lawyer (e.g. understanding information, paperwork)
- Lawyer's knowledge and response to disability, cultural background, gender identity (where relevant)
- Getting help from a lawyer or other people (e.g. having a support person)

Overall thoughts on getting legal advice and sharing information

- What information did you need to share with the lawyer?
- Was there anything you didn't want to share with the lawyer?
- What information do lawyers need about people with disability? Who should give them this information? What information shouldn't be shared with lawyers?
- What would make things better for people with disability who need legal advice when they have criminal charges?

6. Going to court

- Can you tell me about how much experience you have had going to court? What were those experiences like for you?

Themes to explore:

- Going to court
- Knowledge and response of people at court to disability, cultural background, gender identity (where relevant)
- Getting help at court

Overall thoughts on going to court and sharing information

- What information do people at court need about people with disability? Who should give this information?
- What information shouldn't be shared with people at court?
- What would make things better for people with disability who need to go to court?

6. Going to prison and leaving prison

- Can you tell me about your experiences of being in prison? What was this like for you?

Themes to explore:

- Good things about prison
- Bad things about prison
- Prison officers' knowledge and response to disability, cultural background, gender identity (where relevant)
- Getting help in prison
- Activities in prison (e.g. programs, work)
- Leaving prison

General thoughts on prison and sharing information

- Thinking about your experience in prison, what information do prison officers need about people with disability? Who should give this information?
- What information shouldn't be shared with prison officers?

- What would make things better for people with disability who go to prison?

7. Community corrections

- Can you tell me about your experiences with community corrections? What was this like for you?

Themes to explore:

- Being on an order (e.g. requirements, meeting with community corrections officer)
- Good things about being on an order
- Bad things about being on an order
- Community corrections officer's knowledge and response to disability, cultural background, gender identity (where relevant)
- Getting help while on order (e.g. programs, assistance to make appointments with community corrections officer, other supports)

General thoughts on community corrections and sharing information

- What information do community corrections officers need about people with disability? Who should give them this information?
- What information shouldn't be shared with community corrections officers?
- What would make things better for people with disability who are on a community corrections order?

8. Ending the interview

- Thank you so much for sharing your experiences about the criminal justice system. Now that we have had this chat, I wondered if you had any more ideas about what would make it better for people with disability who have been in contact with the Queensland criminal justice system? What would help? What needs to change?
- Is there anything else you want to ask me or share with me?

Finish recording the interview, and debrief with participant. Gauge how participant may be feeling, ask if they have someone they can chat to about the interview if they feel upset about it later. Remind participant about contact details. Thank the person for their participation.

Sample General Probes (These probes could be used, as needed and/or appropriate, with most of the foregoing interview questions)

Can you say more about that?

Could you give me an example?

How did that make you feel?

What are your thoughts about that? What do you think about that?

What was that like for you?

How so?

What makes you say that (think that)?

What does that mean to you?

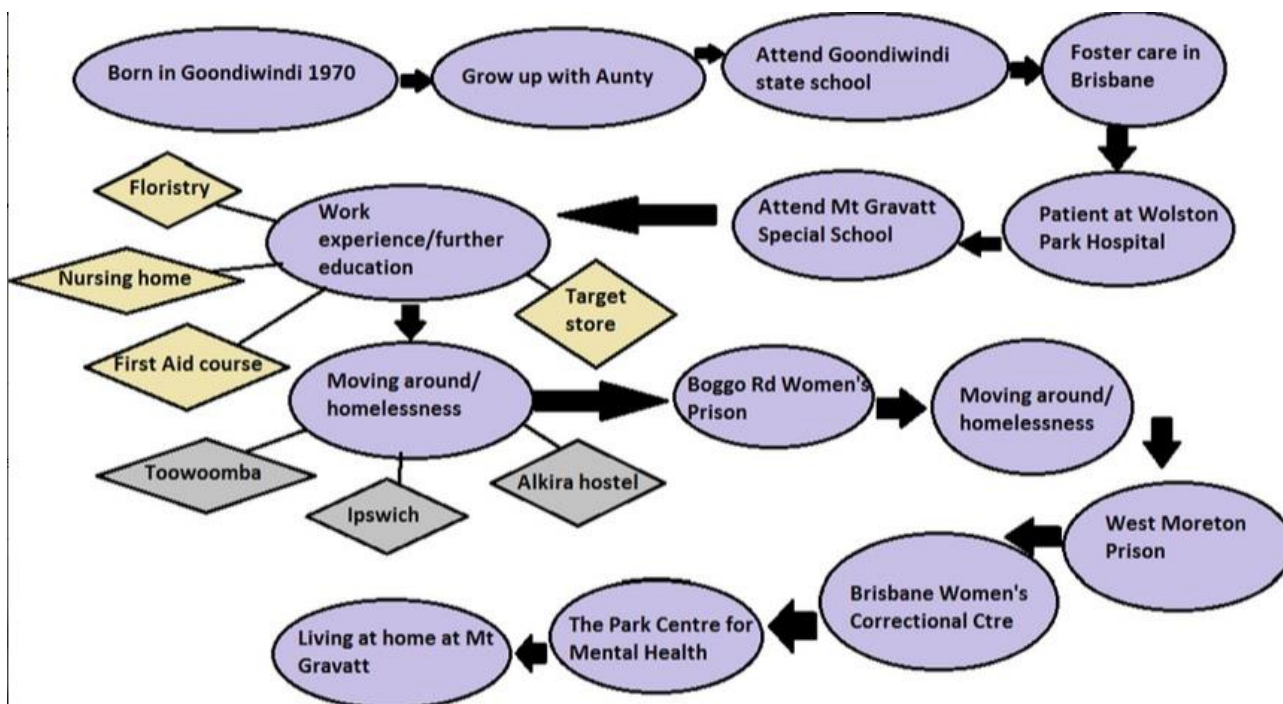
What makes that important (hard, easy, scary, etc.) for you?

How would you like that to be ?

How would you like that to be different? What would you change about that?

REVIEWED REPORT

11.3 Appendix Three: Life Map Example



(Boodle, Ellem & Chenoweth 2014)

11.4 Appendix Four: Family members of people with disability

Pseudonym	Pseudonym and age of person with disability	Type of disability of family member in contact with criminal justice system	Cultural background/ ethnicity	Gender of person with disability	Location	Experience with criminal justice system
William (Brother)	John, 52	Intellectual disability	White Australian	M	Metro/ Regional	Police, courts
Jilly Jack (Mother)	Bill, 34	Bipolar disorder, ADHD	White Australian	M	Metro	Police, courts, Prison, community corrections
LS (Mother)	IB, mid 30s	Intellectual disability	Aboriginal	M	Cairns	Police, courts
Bernadette (Mother)	Justin, 20	Autism	White Australian	M	Regional	Police, legal support, courts, community corrections
Mrs Peacock (Mother)	Peter, 23	Autism, ADHD	Aboriginal	M	Regional	Police, legal support, community corrections

11.5 Appendix Five: Practitioners and professionals

Professional/ practitioner role	Service type	Location	Disability type/s of person/s supported	Experience in the criminal justice system
Practitioner	Advocacy organisation	Metro	Intellectual disability and/or psychosocial disability	Court, Police, legal support, court
Practitioner	Disability peak body	Metro	All disability types	Police, prison
Practitioner	Advocacy organisation	Based in regional. Works statewide	Intellectual disability	Mental health tribunal
Practitioner	Legal aid/representation	Metro	All disability types	Mental health tribunal, legal support, court, prison
Practitioner	Disability organisation	Metro	Mostly intellectual disability	Police, court
Practitioner	Disability organisation	Metro	Mostly intellectual disability	Police, court
Professional	Disability Organisation	Metro	Mostly intellectual disability	Police, court, prison
Practitioner	Disability Organisation/previous work in correctional facility	Metro/ regional/ rural	Psychosocial disability	Police, prison
Practitioner	Disability organisation	Regional	Intellectual, cognitive, psychosocial, FASD	Police, legal support, court, prison
Practitioners x 3	Advocacy service women	Metro	Psychosocial disability, physical disability, cognitive disability	Police, legal support, court, prison
Practitioner/ community member	Advocacy service/community member Aboriginal & Torres Strait Islander	Metro	Cognitive disability, psychosocial disability, FASD	Police, prison
Practitioner	Private practice	Statewide	Cognitive/ Intellectual disability, FASD, psychosocial disability, autism	Police, court, MH tribunal, prison
Practitioner	NGO/advocacy org	Regional	Intellectual disability, autism, psychosocial disability	Police, legal support, court, prison
Practitioner	Disability organisation	Metro	Cognitive disability	Police, legal support, court, prison,

				community corrections
Practitioner/ professional	Drug and alcohol service/outreach program	Metro	Cognitive disability, psychosocial disability	Police prison, community corrections
Practitioner	Prisoner support organisation	Metro	Psychosocial disability	Prison, community corrections
Practitioner	Disability organisation	Metro	Cognitive disability	Police, legal support, court, community corrections
Practitioner	Community Legal Service	Metro	Psychosocial, cognitive disability	Court, prison
Aboriginal & Torres Strait Islander elders	Elders Community Justice Group	Regional	Psychosocial, cognitive disability	Police, court, prison, community corrections
Practitioner	Courts	Regional	Psychosocial, cognitive disability	Legal support, court
Practitioner/ professional	Community Legal	Regional	Psychosocial, cognitive disability	Legal support
Practitioner	Aboriginal Legal Service	Regional	Psychosocial, cognitive disability	Prison, Community corrections
Practitioner/ professional	Corrective Services	Metro	Psychosocial, cognitive, physical disability	Prison, community corrections
Practitioner/ professional	Corrective Services	Metro	Psychosocial, cognitive, physical disability, people who are d/Deaf	Legal support, prison, community corrections

11.6 Appendix Six: List of organisations from which participants were recruited

Aboriginal and Torres Strait Islander Legal Service
Amaroo Aboriginal and Torres Strait Islander Community Elders Justice Group
Cairns Homeless Persons Hub
Carbal Medical and NDIS Services
Caxton Legal Centre
Centacare Prisoner Support Program
Community Living Association
DGM Psychology
First Peoples Disability Network
Footsteps Community Services
LawRight Community and Health Justice Partnerships Program
Legal Aid Queensland
Queensland Advocacy for Inclusion
Queensland Corrective Services
Queenslanders with Disability Network
QulHN
Sisters Inside
TASC Legal and Social Justice Service
WWILD-SVP Association