

**Submission to the Royal Commission  
into Violence, Abuse, Neglect and Exploitation of People with Disability  
Response to The Criminal Justice System Issues Paper (January 2020)**

**Introduction**

This response draws on extensive direct experience of work within Australia's youth justice and adult criminal justice systems and post release support services. It is complemented by more recent investigative research and analysis of changes that have occurred in these government services over the last two decades.

During the last twenty years, the author has presented the findings of this research and analysis to Federal and State government representatives and senior public servants, whilst noting a rapid and constant expansion of the interventions of the Australian criminal justice systems, at the expense of the disadvantaged and persons with disability.

The Australian prison population during this period has increased at around 8 per cent a year, in contrast to the national population growth of less than 2 per cent annually (ABS 4512.0 Corrective Services). No significant or consistent growth has been identified in serious crime rates in any State or Territory during this period. While the Australian community is now aware of the over representation of Aboriginal and Torres Strait Islander peoples in the nation's prisons and juvenile justice centres, it generally remains in ignorance of similar over-representation of persons with a range of disabilities.

A significant percentage of this rapid growth in the prison population is represented by persons on remand, charged but not convicted of any criminal offence. This category of 'prisoner' now represents more than one third of the national prison population. Most of this group are not charged with serious criminal activity, but generally are persons without stable accommodation or with a disability that may impact on their capacity to attend court on the prescribed date.

The recent Law Council of Australia report 'The Justice Project' (August 2018) noted that 'People with disability comprise around 18 per cent of the Australian population, but almost 50 per cent of the adult prison population'. That same report noted the costs of imprisonment across the country (in 2016-2017): \$4.1 billion or approximately \$104,000 per adult prisoner per year, and the costs of juvenile detention, around \$482 million or around \$541,000 per young person in detention.

This submission suggests that it is now time for a radical change in the use of imprisonment in Australia, a change which must reject the rapidly expanding incarceration of the marginalised, the disabled and those who pose no physical threat to our community.

Solutions are available and they must address the social determinants of incarceration, namely: housing and homelessness, education and employment, health and disability, and child protection and juvenile justice. Generally, such solutions do not rest within the justice system itself, but in mainstream government community services and diversion programs.

**Why persons with disability should not, wherever possible, be subjected to ‘treatment’ in the criminal justice system:**

To sum up twenty years of observation and experience, persons with disability should not be drawn into the instrumentalities of the criminal justice system (police, courts, community corrections, prisons) because they will be mistreated.

They will not be heard, they will be isolated, they will be physically and sexually assaulted, they will be discriminated against and they will be significantly damaged by the experience and then released back into the community, with less social connections and less capacity to survive.

Clearly, some persons with disability need be dealt with by the criminal justice system because of the nature of their offence. It is for those persons, who represent a small percentage of those with a disability who currently reside in prisons around Australia, that systemic and radical reforms within that system must be implemented.

The major focus of this submission, however, is not directed towards internal reforms that are required within the criminal justice system itself.

Alternatives to imprisonment have been extensively implemented in most States and Territories for more than twenty years now. Generally, persons with disability are more likely to breach the conditions of such community treatment orders or alternatives to a prison sentence. They then find themselves back in court and in most cases back in prison, for a crime that would normally not attract a custodial sentence.

Despite physical changes that have occurred in many prison systems around Australia, the prison remains a violent place, isolated from the community, where power plays dominant daily life. The strong and the powerful take advantage of the weak and the vulnerable.

Attempts to provide separate placement within such facilities are limited, particularly for those on remand. Often prison authorities resort to segregation in order to ensure protection for those with an obvious disability. This all too frequently results in an extensive use of solitary confinement for those at risk, including many people with significant disability. Recent analysis suggests that more than 5 per cent of Australian prisoners are held in such 23 hours a day isolation, for weeks, months and sometimes for years.

(Reference: *‘Solitary Confinement in Australian Prisons: A further punishment other than that imposed by the courts? A breach of Australia’s international human rights obligations?’* Norden, P., June 2019).

Across the country, recent parole ‘reforms’ mean that those who pose some form of risk upon release, even lack of housing, are denied parole and then released without any form of supervision or support some twelve or eighteen months later. Their prospects for successful re-entry into society are greatly diminished, especially for those who have a significant disability. If they reoffend after completing the full maximum term imposed by the Court, the respective State or Territory government refuses to accept any responsibility.

**Recent research findings analysing the link between disadvantage, disability and imprisonment:**

The Australian community now generally has an appreciation and understanding of the over-representation of the Aboriginal and Torres Strait Islanders communities in the nation's prisons. This matter has received constant and at times in depth analysis in mainstream media.

It is the contention of this submission that very similar patterns of over-representation exist with regard to: firstly, non-indigenous groups in Australian society who reside in the most disadvantaged towns, regions or rural areas; and secondly, persons with a form of disability.

More than 20 years ago, the author of this submission recruited the late Emeritus Professor Tony Vinson AM to engage in research that would verify these assumptions. Project managing Tony Vinson's series of four major statistical research studies mapping disadvantage by postcode (1997, 2004, 2007, 2015) the author helped to increase the general awareness, at least at Federal and State and Territory government levels, of the dramatic correlations that existed between more than 20 disadvantage measures with court conviction and imprisonment.

The wide range of disadvantage statistical measurements that were applied included low birth weight, disability, sickness benefits, low income, confirmed child mistreatment, early school leaving, Year 12 incomplete, lack of post school qualifications, unemployment, long term unemployment, and mortality rates.

A long-established relationship has been recognised between social disadvantage and high rates of imprisonment. Such knowledge in the past has explained why, for example, two-thirds of prisoners are functionally illiterate in New South Wales.

These recent studies however provided much more detailed information and evidence of the correlations that existed between such a diverse range of disability and disadvantage factors with eventual engagement with the criminal justice system.

By way of illustration (ABS 4512.0 Corrective Services, November 2019), some examples from Western Australia, which has an indigenous imprisonment rate (4,058 per 100,000) almost twice that of the national rate (2,518 persons per 100,000), those living in the 3 per cent most disadvantaged LGAs in that State were (Ref Vinson, A. 2015):

- more than 3 times as likely to have a disability
- 2.5 times as likely to have suffered child maltreatment
- 5 times more likely to have a low level of education or to be disengaged from education or employment as a young adult
- 6 times as likely to have been unemployed for a lengthy period
- 8 times as likely to have spent time in prison

The cross correlations between these disability and disadvantage factors showed the very significant relationships which existed between pairs of factors and an extraordinary

'grouping' of such pairs of factors that were clear evidence of the growth of entrenched social disadvantaged in clearly identified localities.

Analysing these statistical findings helped to establish the pathways towards finding some effective solutions. These solutions were presented personally, over a period of time, to the key Ministers and Shadow Ministers at a Federal and State government level and to key senior public servants and local government officials.

By way of summary, the implications of this series of research findings by Tony Vinson for Australian communities where disability and disadvantage are more highly concentrated were as follows:

- Solutions need to be localised to the needs of each particular community and codesign with neighbourhood leaders would enhance successful interventions
- Single dimensional interventions were less likely to be effective because of the complex interrelationships between the disadvantage factors
- Short term solutions would not result in lasting structural change since entrenched disadvantage in such communities had solidified over more than a decade and would require similar terms of commitment to produce positive outcomes
- While substantial funding was not required for such place-based interventions, a higher level of cooperation was certainly required between levels of government
- Building social capital at a local level would strengthen the resilience of the local area and, with time, bring about substantial financial savings by minimising future funding of criminal justice, mental health and drug and alcohol services.

A further significant area of research is being undertaken by the Centre for Innovative Justice at RMIT University, in partnership with Jesuit Social Services, which has led to the *Supporting Justice Project*. This project is a 'systems change' project aimed at addressing the over-representation of people with disability in the criminal justice system. Their work has identified the extraordinarily high level of people with Acquired Brain Injury in contact with the criminal justice system.

The report *Recognition Respect and Support: Enabling Justice for people with an Acquired Brain Injury* found that fragmented and inconsistent response throughout the criminal justice and disability services systems meant that the needs of people with a disability were rarely recognised and responded to appropriately.

While such research might hope to bring about system change within the criminal justice system for persons with acquired brain injury, the more critical challenge is to prevent such persons entering the criminal justice system in the first place.

To be successful at such a preventative level, what is needed is far more effective diagnosis and assessment interventions at a primary level, perhaps through local government services, or educational and employment locations.

The final section of this submission will focus on how to bring about broader systemic change to prevent the lives of persons with a disability entering the justice system itself.

**How to bring about systemic change to divert people with a disability from being inevitably being drawn into the instrumentalities of the criminal justice system:**

Government services are not very adept at responding to the needs of individual citizens, especially those with complex needs. The current barriers identified in fast tracking the implementation of the National Disability Insurance Scheme is illustrative of such difficulties.

The most effective solution to avoiding violence, abuse, neglect and exploitation of people with disability by the criminal justice system would be to provide more effective services at the local level so that less and less such persons would be impacted by that system. This would be very challenging for example in the Northern Territory, and perhaps Western Australia, where human services are so thin on the ground and the geography increases the task to make available mainstream services required by persons with disability where and as they are required. In such places, much of the interventions in response to human need come back to the police and law enforcement authorities.

Nevertheless, there is a challenge faced by the current generation of policy makers and decision makers to make a change. The present scandalous circumstances must be challenged and effective solutions must be found if we are to maintain any level of integrity and credibility...

Attached to this brief submission are three papers that are intended to help bring about that change with regard to the needs of people with disability and their current entrenchment within the Australian criminal justice system:

- Norden P, *Solitary Confinement in Australia* (June 2019) Norden Directions.
- Norden P, *The Inaugural Tony Vinson Memorial Lecture*, UNSW, (September 2018)
- Norden P, *The John Barry Memorial Lecture*, Melb Law School ( )

Each of these papers are directed towards systemic change in Australia's criminal justice system, on behalf of people with disadvantage. Each also call for a greater degree of cohesion in our Australian society which would result in an increased sense of security and safety for all Australians, in particular people with a disability. It is hoped that the future generation of lawyers, academics, social activists and community organisers will consider this radical challenge.

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**January 2020**

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