

From: [REDACTED]
To: [CSJS](#)
Subject: Inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters
Date: Monday, 6 March 2023 9:54:13 AM
Attachments: [protection those who are neurodiverse from judicial bias.docx](#)
[The enduring impact of ongoing delays in Australia's courts - ABC News.html](#)

Inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters

Simon Scott

Committee Secretary Legislative Council Government Administration Committee 'B'

Parliament House HOBART TAS 7000

Email: csjs@parliament.tas.gov.au

Phone: (03) 6212 2245

As a neurodiverse person I am concerned about the possible judicial bias that currently exists in the Tasmanian legal services,

A neurodivergent person has one or more ways in which their brain functions outside the "typical" way. For example, neurodivergent people may be diagnosed with autism, ADHD, OCD, dyspraxia, dyslexia, and dyscalculia.

At one time, these conditions were treated as problems to be fixed. However, with the understanding of neurodiversity, we now have a better and more appropriate way of handling them.

Neurodiversity advocacy focuses on embracing and celebrating neurodivergent brains instead of trying to fix them and make them neurotypical. In turn, advocacy work for alternative methods of handling autism (rather than Applied Behavioral Analysis (ABA) which seeks to make people with autism behave more similarly to neurotypical people) has increased. It's worth noting here that the attributes of the neuro diverse person are permanent, however with time and effort many of these attributes may lessen but will reappear when stressed etc

It is also important to note that while neurodivergent people have brains that work differently than most of the population, there is now much more understanding that those differences can also be beneficial. The qualities and traits that neurodivergence creates are widely varied and can include everything from high perception to strong abilities with computer systems to enhanced creativity.

How many people are so affected?

Autism, also known as autism spectrum disorder including autism and Asperger's syndrome.

1% of the population is so

affected.

ADHD attention deficit hyperactivity disorder
population.

affects about 5% of the

OCD obsessive compulsive disorder
population.

affects about 2% of the

Dyspraxia developmental co ordination disorder

affects about 5 %

Dyslexia a learning disability which affects reading, spelling, and writing affects about 5%

Dyscalculia a disability affecting the understanding of numbers affects about 5%

These figures are supplied by the Australian Bureau of Statistics

2014

Is neurodiversity more common amongst those in the prison system, are those that are neurodiverse recognised and are allowances made within the system for acceptance of those attributes of neurodiversity that would otherwise be considered abnormal.

People belonging to any of the above diagnoses within the neuro diverse share many of the

same behavioural traits, these include:

- Difficulty interpreting what others are thinking or feeling, this can mean that inappropriate interaction with people can occur, as well as saying inappropriate words and interpreting conversation differently from a neuro typical person.
- Trouble interpreting facial expressions, body language, or social cues (see above)
- Difficulty regulating emotion.
- Trouble keeping up a conversation.
- Inflection that does not reflect feelings.
- Difficulty maintaining the natural give-and-take of a conversation; prone to monologues on a favourite subject.
- Tendency to engage in repetitive or routine behaviours.
- Only participates in a restricted range of activities.
- Strict consistency to daily routines; outbursts when changes occur (may be internalised as anxiety)
- Exhibiting strong, special interests
- A strict adherence to the law, more likely to be the victim as opposed to being the perpetrator.
- Tend to have limited social interaction, meaning that they have few if any close friends, this may affect their ability to have someone to accompany them to interviews etc

This information was supplied by the Australian institute of Health and Welfare

As one can see neurodiversity affects a significant part of the community, many of the attributes of neurodiversity may increase the incidence of the affected person coming into the justice system

The attachment labelled Protecting those who are neurodiverse from Judicial bias covers the problems I encountered in a recent interaction with the local council, this illustrates the need for increased awareness of the attributes of Neurodiversity in those managing the justice system at all levels .Whilst the example detailed is a local government issue , as these cases can end up in the magistrate court I feel it illustrates the difficulties a neurodiverse person may encounter in getting justice

The second attachment confirms the poor state of Justice within Tasmania as the court delays have a significant impact on the health and well being of people needing to have decisions made within this system but also creating an environment where people are choosing to pay the fine rather than contest it in court , in essence being denied the right to have their case decided in court

I hope that you will find this submission acceptable for consideration by your committee, I am more than happy to modify it if necessary

Thanking you

Dr Don Hempton



Protecting those who are neurodiverse from judicial bias

With the launch late in 2022 of the National Assistance card by Autism Tasmania it is important for state and local government legislation/policies to be amended to protect those who may use this card from incidental judicial bias.

I have described within the accompanying note the diverse range of conditions seen with neurodiverse people (in excess of 20% of the population is so affected) and lists those behavioural traits which may jeopardise the person getting unbiased treatment especially when in the challenging position of being the respondent.

Perhaps the first issue to be addressed is the fact that a neurodiverse person is more likely to be the victim than the perpetrator, why, remains unsure but perhaps the lack of social awareness, a social naivety places them in such a position. Saying inappropriate words, breaking into conversations, inappropriate responses/action and of course repetitive behaviour such as writing and sending numerous letters/emails may all lead to the person being victimised. In the document I outline various practices that frequently occur when complaints are being investigated which may contribute to the occurrence of legal bias. I will return to these undesirable practices after discussing a case where the Autistic person was definitely discriminated against, and the current system failed to provide any effective remedy.

Sunday 20th June 2021, whilst walking along Ocean Esplanade Blackmans Bay with companion JD, we walked close to the soon to be complainant DC who was showing a young woman something on his mobile phone, his dog was not on a handheld lead, the dogs approached each other, Anna jumped briefly onto the complainant's dog's flank, they separated with some barking but no growling or other aggressive behaviour. There were no visible injuries on either dog.

Wednesday 14th July, a phone call from an individual called R (later reviewed to be RT from the compliance section of Kingborough council) from Kingborough council about the undesirable behaviour of my dog jumping onto another dog. I find phone calls often difficult to hear and may have said irrelevant things. He inappropriately suggested the dog should be muzzled (a very stressful thing to do to any dog and likely to make any undesirable behaviour more prevalent) and walked on a short lead (I was using a 90cm attached to a chest harness which most dog owners find gives the best control of a dog) and he would get back to me in August. I wrote the first of emails to the general manager, numerous emails continued throughout the process and for months after the fine was paid.

Friday 6th August. I received a letter inviting me to participate in a record of interview under caution, despite making many phone calls it was not till the 11th August that I managed to talk to the council officer RT, in this phone call when I pointed out that because I was Autistic and would only come for the interview if accompanied by JD, RT said this would not be permissible. We then agreed that I would submit an email with the facts of the incident detailed. It is interesting that whilst much was made of my alleged refusal to attend the interview in a subsequent review of the case at no time was mention made that the reason for my nonattendance was the fact that I was Autistic. I also realise that I should have done this as a stat dec as that would have made it harder for the council to ignore the details in my email.

August 19th without interviewing any witnesses to the incident an infringement notice was issued, under section 19(2) of the Dog Control Act 2000 for \$344

Whilst this was extremely wrong as there was no evidence that my dog attacked the other dog I was faced with the option of paying the fine and trying to seek redress through other avenues, or I could as an Autistic person face the daunting prospect of fighting it in the Magistrates court. I discussed this issue with several solicitors both of whom advised against taking it to court both from a cost factor, I could spend somewhere between \$1500 and \$3000 to take it to court and council could withdraw the summon shortly before the hearing and I would be left bearing the full cost and the emotion stress of me waiting for a court time, possibly up to twelve months. Even if the hearing went ahead, I might not recoup all my expenses.

I paid the fine

I approached the Tasmanian Ombudsman who rejected my request for a review of the case on the following grounds.

Section 20(2) of the *Ombudsman Act 1978* provides that where the Ombudsman is of the opinion that the person making a complaint has or had a right to have the action complained of reviewed by a court or a tribunal but has not exercised that right, he shall not investigate the action unless he can be satisfied that, in all the circumstances, the failure to exercise the right was not unreasonable. The way that the council asked you to outline your version of events, the recollection of any witness, including June Dixon, and the behaviour of the other dog's owner may all be relevant evidence if you choose to dispute the notice in court. If you believe that the council disadvantaged you in some way due to your autism, the correct body to deal with that issue is Equal Opportunity Tasmania as you have already identified.

I subsequently approached Equal Opportunity Tasmania and the director of Local Government and in both cases were referred back to the Ombudsman.

Did my behaviour (my inadvertent interruption of the complainant's conversation with the woman on the 20th of June which started the whole saga, followed by perhaps ill-advised comments when talking on the phone on the 14th of July plus my repetitive sending of emails) contribute to the events detailed above. It is academic whether that is the case, as described it a pitiful example of natural justice.

Obviously, the recognition of neurodiversity is a starting point, employees of councils and governmental departments who deal with the public need to have the knowledge to recognise and appreciate that behaviour that is different may not be a conscious act of the person showing it. Likewise, safeguards are needed to ensure that personal bias of the employee does not contribute to a distortion of the legal process. This may necessitate the changing of procedures.

The abolition of face-to-face interviews except in the controlled situation currently seen within the police system where not only is a witness/lawyer recommended but a transcript of that interview is readily available for both parties to sign as correct.

The compulsory implementation of a paper trail, signed off by both parties at each stage of the process, complaint, investigation, and management options.

The review of legislation affecting both the ombudsman and Equal Opportunity Tasmania so that respondent has options other than going to the magistrate court.

The review of sections of the Monetary Penalties act to lessen the role of the magistrate's court in minor complaints (say under \$1000) and the need for documented arbitration and the use of other

options to occur before the issuing of infringement notices. This comment is obviously not applicable with things like parking and traffic offenses where the offense is able to be clearly documented.

I apologise here for my verbosity, I am not a lawyer but I feel strongly that the legal journey as detailed above should not have occurred, I also feel strongly that even if my neurodiversity did not contribute to it , it could have and that state Government needs to take a proactive look at the relevant legislation and put in place increased supervision of the compliance activity of the local councils as well as implementing the required steps to ensure all local councils have the necessary policies in place to train the staff in the recognition of the neurodiverse individual and protect these individual from inadvertently being subjected to judicial bias in doing this we will ensure the effectiveness of the National Assistance card and protect users of this card from mishaps in the legal system .

In protecting the neurodiverse community, we ensure equality for the community as a whole

Dr Don Hempton

[REDACTED]

January 2023

[Skip to main content](#)**ABC NEWS**[ABC News Homepage](#)

Set location For local weather

Search

Log In Log In

More from ABC

- [Just In](#)
- [Watch Live](#)
- [Coronavirus](#)
- [Politics](#)
- [World](#)
- [Business](#)
- [Analysis](#)
- [Sport](#)
- [Science](#)
- [Health](#)
- [Arts](#)
- [Fact Check](#)
- [Other](#)


ABC NEWS[← News Home](#)[ABC News Homepage](#)[Latest updates](#) [Ask a question](#)

Share


'Like being suspended in mid-air': The enduring impact of ongoing delays in Australia's courts

By [Casey Briggs](#) and [Maani Truu](#)

Posted Sat 4 Mar 2023 at 5:00am Saturday 4 Mar 2023 at 5:00am, updated Sat 4 Mar 2023 at 11:00am Saturday 4 Mar 2023 at 11:00am Sat 4 Mar 2023 at 11:00am

 An blue and orange illustration showing a line of people outside a stylised courthouse.

Years on from the onset of the pandemic, courts still making their way through piles of backlogged matters. (ABC News: Emma Machan)

Share this article abc.net.au/news/court-delays-not-meeting-national-benchmarks/102044662

Link copied

Copy link

Share

When Emily* thinks back to her virtual court hearing in 2021, one comment sticks in her mind.

"That sounds like a COVID casualty to me," she remembers the magistrate quipping as they reviewed the duration of her matter.

More than a year earlier she had applied for her Family Violence Intervention Order to be extended, and after months of rescheduled hearings and sleepless nights, the end was finally in sight.

She remembers the off-hand comment because it was the moment she realised it must mean many others were enduring a similar ordeal.

"Those words had clearly been used before, it was clearly an entrenched term," Emily says.

"It's when I knew there really was something wrong with the system."

Years on from the onset of pandemic shutdowns, courts of all levels are still making their way through piles of backlogged matters, forcing victims, witnesses and defendants to endure delays far beyond the nationally agreed benchmarks.

In the previous financial year, nearly half of all matters before Australian criminal courts took more than three months to reach a resolution, according to new data released by the Australian Bureau of Statistics on Friday. The data does not include matters which are yet to be finalised.



In some cases, the process was far longer. In 2021-22 nearly 60,000 cases — or more than one in nine matters before criminal courts around the country — took a year or more to resolve.

The delays are most severe in Victoria and Tasmania, where the median length of a matter was almost six months.



That might not sound like very long, given how long trials reported in the news tend to run, but many matters that go through the court are relatively mundane. For example, 35 per cent of finalised matters in Magistrates' courts — which handle the bulk of cases — are traffic offences.

In higher courts, which typically deal with more serious offences, across Australia most matters took more than 36 weeks to be finalised in 2021-22.

Comparable backlogs also exist for civil matters, like intervention orders, according to data from the Productivity Commission.

"When I started to practise, which was a long time ago, after charges were issued it was usually listed within a few months," the Law Institute of Victoria's president Tania Wolff says.

"I think that's probably where we would be wanting to get [back] to."

Life in limbo

Emily describes the 18 months she spent waiting for the magistrate to make a decision on her application like "being suspended in mid-air".

"If it's granted, great, if it's not, fine, I'll move forward in my own way," she says, "but you're living in this suspended state of not being able to move forward, not being able to move sideways."


She ended up having three directions hearings scheduled before the intervention order was granted; the first she missed after misunderstanding the documentation, then the second was postponed at the last minute after a police assessment was not able to be completed on time (but not before she paid for a lawyer to represent her at court that day). It was the third directions hearing, in the middle of 2021, when she heard the phrase "COVID casualty".

Emily was studying criminal law while going through this process. "It was interesting for me to see, in theory, how it's supposed to work, and how in operation, it's just a very clunky system," she says.

Trying to navigate this, while mentally preparing for all possible outcomes, took a toll on her ability to juggle work and study. When the order was granted, she says, she slept for a week.

"You go from one emotional prison of being concerned about contact from a particular person, being owned by an individual, and then next you're being owned by a system, and you have no control over what's happening," Emily says.

"It was the court system that was even more exhausting than the cause of it."

 A woman with long blonde hair and a black jacket stands with her back leant on a bookshelf. Law Institute of Victoria president Tania Wolff says delays in having court matters heard are impacting people's feelings towards the justice system. (Supplied: Law Institute of Victoria)

Wolff says this limbo state can have a significant impact on the welfare of anyone involved in a court matter. "If you have a matter which is concerning you that can't be resolved, and you're stuck in that place for a very, very long time, you end up despairing," she says.

"That impacts you but it also impacts the way in which you consider this justice system, which is a cornerstone of our democracy."

Wait times were creeping up before COVID

Emily began the proceedings in March 2020, just as COVID began to arrive in Australia. Between then and October the following year, when the order was granted, her home city of Melbourne would endure six lockdowns, forcing court operations to grind to a halt.

But even before the disruption of the pandemic, the time it took for matters to make their way through the courts was creeping up in some jurisdictions.




The most recent data shows a modest improvement on the delays at height of the pandemic emergency. In Victoria, the median finalisation time has fallen by about a week and a half.

"It's now that the courts are back up and running that we're really seeing the full extent of the delay," Victorian lawyer Louise Conwell says.

"The effect of COVID was that we really couldn't deal with matters at all, we were working in a sort of emergency situation — just trying to triage matters and deal with what we could."

When it comes to the large gap in how long it takes to finalise matters between states, Professor Tania Sourdin from the University of Newcastle says it's not only a result of lockdowns but also a difference in priorities.

 A headshot of a woman with short blonde hair.

A number of factors contribute to court matter finalisation times in each state and territory, Professor Tania Sourdin says. *(Supplied: Tania Sourdin)*

"I think what we're actually seeing in Victoria is a greater focus on treatment," she says. "A bigger focus on more therapeutic approaches, considering drug and alcohol treatment, and that may be leading to a lower overall filing rate."

In Victoria, there has also been greater use of jury trials — which tend to take longer than judge-only trials — than in states like NSW.

Sourdin says the Victorian Government invested in more judicial officers before the pandemic, but the COVID-related lockdowns meant the impact of that is yet to be seen.

"Hopefully over the next year or so we'll begin to see a decline but it's going to take some work to reduce what is now a significant backlog," she says.



National benchmarks for the time it should take for matters to be resolved by the courts were adopted in the early 2000s, and the Productivity Commission reports on these every year.

The benchmarks say no more than 10 per cent of matters in magistrates' courts should take longer than six months to be finalised, and in higher courts, no more than 10 per cent of matters should take longer than a year.

No state or territory is meeting them, in either the criminal or the civil courts.

In the magistrates' courts, all states have fallen short of the standard for a decade. NSW has tracked closest to the benchmark in the criminal courts, but has seen worsening backlogs in recent years.



Wolff says delays in the civil courts, like administrative tribunals where claims are often relatively low-value, can quickly disrupt people's lives. As an example, she points to the Victorian Civil and Administrative Tribunal, where anecdotally she has heard of lengthy delays.

"It might be that you have an issue with your tenancy and that's not being resolved ... or you're a landlord and you're not being able to move someone to comply with the conditions of their lease," Wolff says.

"If you have a significant event in your life, which can't be resolved until a future date, and that keeps on getting kicked down the road, that is going to impact on your mental health, that's going to impact on your ability to get on with your life."

Those found not guilty wait the longest

In criminal court matters, defendants in about 85 per cent of cases are found guilty, while the remainder are either acquitted, transferred to other courts, or have their charges dropped by prosecutors.

And it is those found not guilty that, on average, are waiting the longest for justice to be served. That's in part because the average wait time is pulled down by people who plead guilty, avoiding the need for a trial.

About 23 per cent of people who end up being acquitted or having their charges dropped wait more than a year for that outcome.




"There were already delays in having matters proceed through the criminal justice system prior to the pandemic, but the period in which it takes for a matter to be dealt with is now significantly protracted," says Conwell, a criminal law specialist at Stary Norton Halphen.

As a result, she says she routinely advises her clients that if they plead not guilty, it may take up to a year and a half for the matter to be heard.

"In the high jurisdictions, the County Court and the Supreme Court, we're talking about years from charge to having a trial heard," she says. "And that includes people who are remanding in custody, awaiting their trial, and presumed innocent."

Thousands locked up in prisons but still presumed innocent

A gradual tightening of bail laws has fundamentally shifted who goes to prison and why. With a record percentage of prisoners on remand, experts warn that people are being unnecessarily pushed into incarceration.

 An illustration of two hands coming out from behind a barred window.

[Read more →](#)

A record 36.6 per cent of Australian prisoners were unsentenced at the end of June last year, according to data released last week by the Australian Bureau of Statistics.

For many of these people, any delay in court proceedings can mean additional weeks or months behind bars. "They may well spend a year in custody awaiting trial before being ultimately acquitted and released into the community to have to piece their lives back together without financial assistance, without compensation," Conwell says.

"The time that they spend in custody we colloquially refer to as 'dead time' — it's not automatically deducted from any other matters they may be facing, it's simply time spent in custody awaiting trial that is not attributable to any other place."

Defendants awaiting trial in the community may also be subject to onerous bail conditions, including curfews and regular reporting.

Can we get it under control?

Wolff believes it's possible to reduce backlogs back to the size they were when she started practising, but says getting there will require "some smart justice solutions".

"It needs to involve diversionary mechanisms, to make sure that only those matters that really need to go before a judicial officer do," she says. "It needs to increase the use of cautions, particularly for youth offenders, and diversionary measures."

In Victoria, she points to the summary offence of begging or gathering alms as one example of where the state could take a different approach. "There's no reason why that should be a criminal offence that could go before a magistrate, given that the solution for that is sustainable, accessible housing," she says.

While the Victorian Government has taken some steps to reduce the backlog, Sourdin says attention needs to be directed to other states drifting further from the benchmarks. "With some of these other states where you're seeing like a continuous climb [like in] Tasmania, I think there needs to be remedial action taken immediately."





From her perspective on the courtroom floor, Louise Conwell struggles to see how the situation will improve in the near future. "I think we will be dealing with it [backlogs] for a number of years to come," she says.

"Justice delayed is justice denied, that's true for victims, witnesses, police officers, prosecutors, defence lawyers, and most certainly the accused person."

**Names have been changed.*


Posted 4 Mar 2023 4 Mar 2023 Sat 4 Mar 2023 at 5:00am, updated 4 Mar 2023 4 Mar 2023 Sat 4 Mar 2023 at 11:00am

Share


-  [Copy link](#)
-  [Facebook](#)
-  [Twitter](#)
- 

Related Stories

- **More magistrates to clear backlog of domestic violence cases if NSW Coalition re-elected**

 A silhouette image of a woman and a young child sitting outdoors

- **Concerns Victorians being 'denied justice' as court system backlog delays cases**

 Court generic

More on:

- [Australia](#)