

Submission into Legislative Council Inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters

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Recommendations:

Factors influencing increases in Tasmania's prisoner population and associated costs.

1. Improved screening and assessment practices to identify people with intellectual disabilities in the justice system with a view to diversion from a custodial setting, where appropriate
2. Targeted early intervention strategies to divert children and young people with disability away from the youth justice system.
3. Changes to laws, policies and guidelines that result in the indefinite detention of people with disability in custodial settings
4. Develop alternatives to the risk-averse policies that prioritise the use of imprisonment over the development of essential adaptive skills for offenders with intellectual disabilities.

The use of evidence-based strategies to reduce contact with the justice system and recidivism.

5. Move beyond a siloed approach to prisoners with intellectual disabilities to promote and support interagency communication and cooperation aimed at creating a holistic needs-based approach to offenders and prisoners with intellectual disabilities.
6. Develop guidelines for prison personnel and Community Corrections officers working with offenders with intellectual disabilities, with a particular focus on the development of adaptive skills.
7. Provide community-based interventions for offenders with intellectual disabilities with the provision of ongoing support in the areas of health and well-being, life-skills, and education and vocational skills.
8. Ensure that the above practices are subject to evaluation and that the findings of said evaluations are acted upon in an appropriate and timely manner.

The provision of, and participation in, services for people in prison and leaving prison (health, housing, and legal services).

9. It is imperative that prisoners with intellectual disabilities have access to health services, psychological support, assistance with money management, and support when interacting with legal practitioners.
10. The vulnerability of prisoners with intellectual disabilities exiting prison must be formally recognised, with appropriate mid-to-long term accommodation options available prior to release.
11. Prisoners with intellectual disabilities exiting prison should receive immediate and ongoing support to interact with Centrelink, obtain a Medicare card, public transport card and to participate in planning their post-release life.
12. Ensure that offenders with intellectual disabilities receive timely and ongoing support in accessing the NDIS, particularly those in custodial settings. The appointment of an NDIS Justice Liaison Officer would improve coordination and better support offenders in prison and post-release.
13. Prisoners should have access to visits from children/family members, regardless of their security rating.

Training and support initiatives for corrective services staff related to increasing individual well-being, professionalism, resilience and absenteeism.

14. The need for increased disability awareness training in all areas of criminal justice and adequate provision of supplementary training for all corrective services personnel in respect to appropriate and informed management of prisoners and ex-prisoners with intellectual disabilities.
15. Formal acknowledgement, including financial recognition, of additional training undertaken by corrective services personnel.
16. Develop and maintain links between Corrective Services personnel and non-government agencies aligned with supporting people with intellectual disabilities. These include (but not limited to) SpeakOut Tasmania, Women With Disabilities Australia, Primary Health Tasmania, Department of Social Services and the Department of Communities Tasmania
17. Ensure sufficient resources for prison and Community Corrections personnel to undertake advanced training in the management of prisoners and ex-prisoners with complex needs, including intellectual disability. This should include the necessary competencies to train others.

18. Ensure that prison and Community Corrections management are aware of best practice approaches for offenders with intellectual disabilities and support ongoing training of personnel in this key area.
19. Recruitment of additional professional staff (psychologists, counsellors) to ease current caseloads for existing practitioners in both custodial and community settings.
20. Ensure sufficient and timely resources for Corrective Services personnel with respect to counselling and psychological services. This is particularly important for staff managing prisoners with complex need, including intellectual disability.

Innovations and improvements to the management and delivery of corrective services that may be applied in Tasmania, including to future prison/detention centre design.

21. Ensure tailored support for people with intellectual disabilities in custodial settings, and increased community-based throughcare when transitioning back into the community.
22. Raise the age of criminal responsibility to 14 years, in accordance with the United Nations Convention on the Rights of the Child. This is particularly important given the over-representation of young people with disability entering the criminal justice system.

Any other incidental matters

Drawing upon the *Premier's Economic and Social Recovery Council Recommendations 2021*, the strategies proposed in that document are equally applicable to those caught up in the CJS. Initiatives contained within that document include:

- engage with Trade Training Centres, TasTAFE and other education and training providers to optimise services and use of local facilities; and
- engage with community and collective impact networks to provide networks for job seekers through a link into local industry
- developing networks between organisations and service providers

And further:

The State Government and its agencies should actively seek out and fund community-led, place-based recovery activities. Priority should be given to activities with the following objectives:

- increased community connection including collaboration across existing community organisations.
- primary prevention of, and early intervention in, areas such as family or community violence and drug and alcohol misuse

The links between what is being proposed for the betterment of Tasmanian communities and the development of a new strategic plan for reducing reoffending in both adult and youth populations are clear. However in my experience, despite rhetoric around themes of inclusivity and dismantling barriers that prevent those with intellectual disabilities from fully participating in a productive and meaningful life, those self-same barriers persist. When time in prison is added to existing stigma and social exclusion, opportunities for change that brings fulfillment are further reduced. The very phenomena regarded as essential for healthy communities are the exact same phenomena that those working in corrective services, particularly the prison, have continually flagged as being fundamental to breaking the cycle of incarceration and offending.

I am appreciative of the opportunity to contribute to this vitally important Legislative Council Inquiry. I am making this submission in a personal capacity. My submission is evidence-based, having conducted qualitative research in Tasmania's Risdon Prison along with a number of Australian women's prisons over the past decade. As a lecturer and researcher in Criminology at Monash University, and having taught in similar roles at the University of Tasmania, the University of Adelaide, the University of South Australia and Flinders University, I have both academic and practical knowledge of the challenges associated with offender management in custodial settings and in the community. I hold a PhD from the University of Adelaide, a Masters Degree (Criminology and Corrections) from the University of Tasmania, a Bachelor of Arts from the University of Tasmania, and a Diploma in Teaching from the University of South Australia. I have worked as a volunteer for several years, delivering the Peace Education Program to incarcerated women in Adelaide Women's Prison.

My research in Risdon Prison examined the importance of maintaining connections between incarcerated parents and their children, with a specific focus on the value of Kids' Days as an initiative in promoting such relationships (and their evidence-based links with a reduction in

reoffending). Through the inspired work of Pastor Norm Reed of the Onesimus Foundation, the expansion of programs that support family connections has grown exponentially in Tasmania.

More recently, my research has turned to the incarceration of women with intellectual and cognitive disabilities in Australian prisons, including Risdon Prison. Of note is the fact that intellectual disability rarely stands alone, but is part of a range of complex needs that include (but are not limited to)

- poor mental health
- addictive behaviours, particularly drug and alcohol abuse,
- pre-existing and ongoing trauma, including family and domestic violence
- lack of adaptive skills, particularly impulse control, leading to increased vulnerability
- social exclusion
- the erosion of cultural heritage for First Nations prisoners

Risdon Prison is fortunate to have a number of experienced and highly committed professionals. However, case loads are such that the provision of throughcare, both in the prison and community settings, is challenging. This impacts in several ways, not the least of which is the attrition of experienced staff. The reality of managing the day-to-day lives of offenders with complex needs, over and above placing considerable pressure on practitioners, disadvantages those offenders via inadequate resources to effectively implement strategies aimed at a reduction in reoffending. This includes prioritising essential life skills, key to successful reintegration into the community.

An investment in an increase to both the number of skilled practitioners, and additional training for existing personnel will ultimately provide better quality throughcare for offenders at every stage of criminal justice interactions, as well as an improved work environment for corrective services personnel.

My research in Risdon Prison revealed the following practitioner concerns, notably an absence of:

- alternative accommodation options
- suitable diversionary pathways
- readily available mental health assessments

Of note, practitioner feedback in women's prisons, including MHWP, spoke to the vulnerabilities of intellectually disabled women in abusive, violent and/or neglectful situations. Central to their concerns was the fact that these women are most often dependent on

perpetrators for care, including access to money. Practitioners associated with MHWP stressed the urgency of providing prisoner education in adaptive skills, highlighting the role this skillset plays in remaining safe in the community, and significantly, crime-free.

I think that we're doing some good stuff in there, but ideally, we'd make it a really robust, strong program. I think if we were, with the women, to do something like that, it would be great to see regular programs on a rolling basis - life skills, like independent living skills. We don't offer much of that in here, and I think that if we can arm them with the skills to actually survive out in the community, that would be huge gains. Budgeting, getting public transport – I'd love to be able to see them eligible for more leave, so that that stuff could be done while they're in prison, rather than having to wait for them to get out, and back into their chaotic world that they live in, unfortunately. Practitioner Risdon Prison

A further point consistently raised by prison practitioners, including Risdon Prison, was the preference for accommodating the needs of offenders with intellectual disabilities in the community rather than a custodial setting.

I don't think there's really enough support in the community to help her. I think her core issue, really, is related to alcohol use. Almost all of her offending, really, is related to alcohol use, and you know, I would like to think that we could address alcohol use in the community, you know? It doesn't really seem right that someone with an intellectual disability has primary issues in binge drinking, ends up in prison 26 times...

When reflecting on the voices of practitioners in Risdon Prison, a repeated theme was the cyclical nature of incarceration for offenders with intellectual disabilities.

With one of the young fellas in particular, it's been really difficult, because he carries a lot of antisocial traits, so he's not – he's very reluctant to engage with services, because he has a lot of issues around authority...But there have been occasional moments where he's wanted to engage, and we've attempted to get that up and running, and then he's been sentenced to time served, and literally left on the day. He's with the public trustee, they're not aware, so there's no finances in place, there's no accommodation, like all that sort of stuff. Then, within a week, he's back, and then we've got another six weeks, and then he's out again. So, it's just this constant – we can't gain traction, and it's just really sad to see. Practitioner Risdon Prison

And further:

They come in for a month, then they're bailed, or they come in for three weeks at a time, and they go back out on bail, they come in – so, they're not technically eligible for our planning reintegration team, and so we do as much work as we can, but

things like housing, you know, specialist disability supports, those things don't just appear out of nowhere... And they take a lot of time to coordinate, so we find that we really struggle with that population, particularly, because they come in, and we're identifying the needs, we're putting through NDIS requests, and then they're bailed and they disappear, and we can't find them. They come back, start the ball rolling again, they're gone, they come back, and the revolving door is really difficult.

Practitioner Risdon Prison

Perhaps the most compelling observation during my research in prisons was the prioritisation of security and containment over therapeutic or criminogenic interventions. Practitioners in all participating prisons identified that within the prison setting, the fact that a prisoner has an intellectual disability makes little or no difference to how they are managed. Rule infractions, regardless of the reasons, still incur the same penalty as any other prisoner. As one practitioner from Risdon Prison observed:

I would like for correctional officers to have a bit more training, a lot more, really, to try and improve their understanding of what intellectual disability or impaired cognitive functioning of whatever background, what that does to people and how they interact, and simple things like speaking a little bit more slowly, and trying to make your words simple and clear...

Intellectually disabled prisoners are expected to understand and adhere to prison regulations, and difficulties with comprehension are not factored in, especially by some custodial officers. Even though there is general acknowledgement by practitioners that intellectual disability directly contributes to vulnerability, this does not impact the prison emphasis on security as the priority in day-to-day operations.

The Tasmanian Government's proposed plans for the construction of smaller, more therapeutic-based units is positive in that it demonstrates a willingness to move beyond traditional custodial settings with their focus on security and containment, to a model that recognises humanitarian ideals. This is exactly the type of accommodation that was mooted by several Risdon Prison practitioners when discussing the management of offenders with intellectual disabilities. The limitation of current prison protocols to reduce and prevent reoffending was encapsulated by the words of one Risdon Prison practitioner:

She's clearly not getting anything out of it, except being – thinking that she can't survive in the community, or successfully integrate, and thinking that she's bad, because she keeps getting in more and more trouble here.

Research such as mine that interfaces with the areas this Inquiry is targeting is important. However, I strongly believe in the voices of those at the 'coalface' of corrections, whose

perspectives are shaped by the work they do, and the offenders they interact with. Although my focus has coalesced around prisoners with intellectual disabilities, it would be naïve to assume that the recommendations I have proffered here have no application to the broader context of offenders in custodial and Community Corrections settings. Research continually drives home the fact that as a model for reducing recidivism, prisons are a dismal failure, one that is costly in both financial and humanitarian terms.

Tasmania has the opportunity to move in a new and progressive direction, one that heeds the overwhelming conclusion put forward by many experts, both scholarly and industry-based, that prisons themselves are criminogenic. This is disturbing. However, the fact that the Legislative Council is conducting this Inquiry promises hope – hope for offenders and for those tasked with their care.

Thank you for taking the time to read this submission. I would welcome the opportunity to speak further to the Sub-Committee should they so desire.

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Latest publications:

Toohey, J. (2023) 'Out of Sight, Out of Mind: The Incarceration of Cognitively Disabled Women in Australian Prisons' in I. Masson and N. Booth (eds.) *The Routledge Handbook of Women's Experiences of Criminal Justice*. Abingdon: Routledge: 314-327.

Toohey, J. (2022) *The Social Exclusion of Incarcerated Women with Cognitive Disabilities: Shut Out: Shut In*. Abingdon: Routledge.

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