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# 'There's not just a gap, there's a chasm'

The boundaries between Australian disability services and prisons

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# Acknowledgements

Funding for this research was provided by the Public Service Research Group at UNSW Canberra.

Thank you to the participants from government and non-government organisations in the Australian Capital Territory (ACT), New South Wales (NSW) and Victoria who participated in interviews or provided a written submission in 2021. We acknowledge this was a difficult time with many of these organisations dealing with challenges due to the pandemic. We greatly appreciate the time these stakeholders took to provide their valuable insights to us. Thank you to Dr Mindy Sotiri, Executive Director of the Justice Reform Initiative, for providing her insights at the report launch in June 2022.

Thank you to the Public Service Research Group professional staff and the UNSW Canberra media team for all their assistance with finalising this report and with the report launch in June 2022.

The authors of this report would like to acknowledge the traditional custodians of the lands on which this report has been written, reviewed and produced. We pay our respects to their Elders past, present and future.

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# List of Acronyms

<b>ABI</b>	Acquired Brain Injury
<b>ABS</b>	Australian Bureau of Statistics
<b>ACT</b>	Australian Capital Territory
<b>AHRC</b>	Australian Human Rights Commission
<b>DRC</b>	Disability Royal Commission
<b>NDIA</b>	National Disability Insurance Agency
<b>NDIS</b>	National Disability Insurance Scheme
<b>NSW</b>	New South Wales
<b>OPA</b>	Office of the Public Advocate
<b>UNSW</b>	University of New South Wales

# Executive Summary

## Background

People with disability are overrepresented in the Australian criminal justice system and are a disadvantaged sub-population within the already disadvantaged prison population. Inadequate disability support is linked to cycles of offending and reincarceration for people with disability. Despite the importance and prevalence of these issues, there is limited research in Australia on the intersection of disability and correctional services.

This report explores the results of a study into the intersection between disability and corrective services in Australia from the viewpoint of stakeholders who work with criminal justice-involved people with disability. Through semi-structured interviews with professionals in the Australian Capital Territory (ACT), New South Wales (NSW) and Victoria the study explored questions such as how people in prison with disability are identified, what disability supports are available in prison and for transition back to the community, whether these services are sufficient to meet their needs, to what extent National Disability Insurance Scheme (NDIS) services are available to people in prison with disability, and what challenges or obstacles might prevent NDIS access. We also considered how the needs of people in prison with disability might be better met.

## Structure

The report is structured into findings on three broad topics:

1. To what extent do Australian prisons identify and accommodate the needs of people with disability?
2. To what extent are services and support available through the NDIS for people with disability in custodial environments?
3. Are NDIS services readily accessible for people with disability once they leave prison?

## Findings

We found that interviewees considered the identification of people with disability in custodial settings to be poor. They also felt that prisons are generally not equipped to provide the services and support required by people with disability. In the absence of services provided by prisons, participants noted that people with disability are often forced to rely on peers to navigate the prison environment and for support with daily tasks. Drawing on the concept of 'institutional thoughtlessness' (the ways that a prison environment ignores or fails to recognise the needs of particular groups), we argue that people with disability face a 'thoughtless' prison environment, regime and culture that simultaneously overlooks, compounds and further punishes disability.

## **NDIS in prison**

Some people may enter custody with NDIS plans or be eligible to apply for NDIS support while incarcerated. The NDIS represents a significant reform in the Australian disability service landscape and has led to improved services and greater choice and control for many Australians with disability. However, there have been many implementation issues regarding the boundaries between the NDIS and mainstream services such as justice. Some forms of NDIS support are permitted to be delivered in custodial environments, primarily some types of assistive technology and services geared toward preparing for transition to the community after release. However, participants found policy to be unclear and were often not sure what, if anything, was permissible or feasible.

Day-to-day disability supports are the responsibility of custodial facilities, and our interviewees did not think that prisons provide even close to the same level of services and supports that people with disability might have received in the community through their NDIS plans. Some told us that NDIS transition services can occur for people in prison (perhaps increasingly so in recent years) but that it does not routinely happen and can take hard work and significant coordination to achieve. From a client's perspective, the NDIS ethos of 'choice and control' can also be difficult to exercise in an environment where virtually all control has been taken away.

Our findings suggest that in the complex authorising environment of Australian prisons, NDIS service delivery is only possible when advocates and staff are particularly persistent (e.g. when state-based services work to smooth the boundaries) or when multiple factors align to facilitate a particular outcome. Further, participants reported that some NDIS clients in custody get 'great service' and others receive nothing, so there is inconsistency and inequity in what is possible. This means there is a need to investigate more closely which parts of the system interface facilitate and inhibit the delivery of much-needed NDIS services to prepare people in prison for reintegration into the community. Without targeted intervention, people with disability are missing out on the very services they need to avoid returning to custody.

## **NDIS after prison**

Our findings suggest that once people with disability leave prison, they continue to face significant barriers in accessing NDIS services, which has implications for their continuing involvement with the criminal justice system. There is clearly a gap in the existing system of specialist support to encourage and help individuals to demonstrate their eligibility for the NDIS and then to secure an appropriate plan and navigate the system to arrange necessary supports. Further, the ethos of 'choice and control' exists not only for NDIS participants, but also for service providers. Service providers can choose who they work with, and there may be little incentive for providers to take on individuals who have behaviours of concern. In this context, people who face many challenges and complexities in their lives, such as formerly incarcerated people with disability, may find it difficult to secure provision of supports – or service arrangements can be short lived. In the absence of sufficient specialist service coordination, advocacy support and a provider of last resort,

some people are locked in a cycle where behaviours linked to their impairments lead them to encounter the criminal justice system again and again.

The situation was summed up by a community sector service provider P08, who reported that there was ‘nothing there for them really’ in prison apart from protective custody, and for post-release:

**“...there’s not just a gap, there’s a chasm. ...it has got a little bit better with the people at least helping with NDIS stuff. But people with disability keep going in and out and in and out because they don’t have the support when they get out. Having an NDIS package when they get out doesn’t mean they’re going to get support from that NDIS service straight away because they don’t know how to access them.”**

## Recommendations

Recommendations stemming from this research include better identification of people with disability as they enter prison, including a consistent assessment process, improved training and development for corrections staff on disability, and ensuring appropriate adjustments are made for people with disability in corrections services (particularly those with intellectual disability). This would include the modification of prison-based education and behavioural change programs to ensure they are delivered in Plain English and Easy Read wherever required, with assistance provided to people with disability to complete the programs.

Based on our research, we argue there should be consistent identification of those who have NDIS plans as they enter prison, and better resourcing of advocacy services (both inside and outside government) to achieve improved NDIS planning and service provision for people in prison and post-release. To the same end, the system clearly requires greater availability of support coordinators and providers with specialist expertise in working with criminal justice-involved people with disability, and a provider of last resort. Improved clarity of funding guidelines could prevent delays and ‘buck passing’ – particularly in recognition of the fact that behaviours considered criminogenic (and therefore not the responsibility of the NDIS) are often strongly linked to people’s impairments and therefore it may not be possible to disentangle the two for the purposes of funding decisions.

Future research should focus on the lived experiences of people with disability as they navigate the criminal justice system. There is limited academic research that makes central the voices of people with disability, which can therefore lead to misconceptions about their experiences. There is also a need for investigation into the types of supports that can prevent people with disability from being criminalised due to behaviours associated with disability. Lastly, further investigation is required into what would make for more effective experiences and pathways through the criminal justice system and what supports could prevent people with disability from being re-incarcerated.

# Introduction

This research brings together a team with interests in criminal justice and in disability policy. It originated from a persistent issue in advocacy work in the criminal justice space: the lack of appropriate supports for people with disability. In her role as the President of Prisoners Aid (ACT), Dr Caroline Doyle (the project's Chief Investigator), has been asked on multiple occasions whether services supported under the National Disability Insurance Scheme (NDIS) could be accessed when individuals were incarcerated. In conversations with others, it was clear that perspectives varied significantly and there appeared to be no clear-cut answers to this. It seemed to be an example of practice and policy diverging at a few important points. This led to the establishment of this project, focused on exploring this issue in an attempt to pursue answers.

This report explores the results of a study into the intersection between disability and corrective services in Australia from the viewpoint of stakeholders who work with criminal justice-involved individuals with disability. Through semi-structured interviews with stakeholders in the Australian Capital Territory (ACT), New South Wales (NSW) and Victoria the study sought to answer the following questions:

1. How are people in prison with disability identified?
2. What supports are available to people with disability in prison and as they transition to the community following a period of incarceration?
3. To what extent are NDIS services available to people in prison with disability?
4. Are these support services sufficient to meet the needs of people in prison with disability?
5. What challenges or obstacles may prevent a person's access to NDIS support during and after incarceration?
6. How might the needs of people in prison with disability be better met?

People with disability are overrepresented in the Australian criminal justice system (Australian Institute of Health and Welfare, 2019; Dias et al., 2013; Hellenbach et al., 2017) and are a disadvantaged sub-population within the already disadvantaged prison population. Despite the importance and prevalence of these issues, there is limited research in Australia on the intersection of disability and correctional services (see Dias et al., 2013; Hellenbach et al., 2017), leaving a large research gap in this area.

This report addresses this gap by outlining findings regarding the following key areas of the prison and post-release experience of people with disability in Australia, from the perspective of professionals who work in this area:

1. To what extent do Australian prisons identify and accommodate the needs of people with disability? (see Findings: Part 1 – *The forgotten prisoners: The impact of imprisonment on people with disability*);



2. To what extent are services and support available through the NDIS for people with disability in custodial environments? (see Findings: Part 2 – *NDIS in prisons: Policy and practice*);
3. Are NDIS services readily accessible for people with disability once they leave prison? (see Findings: Part 3 – *Accessing the NDIS as a formerly incarcerated person with disability*).

The structure of this report is as follows. Firstly, we look at the ‘forgotten’ prisoners, and examine the impact of imprisonment on people with disability. Secondly, we look at the NDIS in prisons, from both a policy and practice perspective. Thirdly, we look at issues associated with accessing the NDIS as a formerly incarcerated person with disability. Finally, we provide our recommendations, focusing on areas for improvement in policy and practice, as well as areas for future research. As we outline, we found significant variation in practice and outline several areas where further work is needed to ensure that people with disability are not discriminated against within the criminal justice system. We make observations and suggestions about appropriate supports to help people avoid returning to the system on release.

## **Background**

Australia is currently imprisoning a record number of people (Australian Bureau of Statistics (ABS), 2021; Productivity Commission, 2021). As the prison population grows, inevitably so too will the number of people with disability in prison (Cunneen et al., 2016). In fact, people with disability represent a significant proportion of Australia’s prison population. As an example, the prevalence of ‘intellectual disability’ within the community is roughly 3% (ABS, 2012). However, the proportion of people in prison with intellectual disability is reported to be higher than this, with variability across jurisdictions. For example:

- In the ACT, 28% of people in prison screened positive for an intellectual disability (Young et al., 2017b), while a second self-report survey found 30% of detainees identified having an intellectual disability (ACT Inspector of Correctional Services, 2019).
- In Queensland, the reported rate of intellectual disability amongst adult prisoners is 9% (Bhandari et al., 2015; Dias et al., 2013). A more recent study reported 22% of formerly incarcerated people screened positive for possible intellectual disability (Young et al., 2017a).

Certain types of disability are especially prevalent within prison. For example, a 2011 study found that 42% of Victorian men in prison and 33% of Victorian women in prison have an Acquired Brain Injury (ABI) compared to just 2% in the community (Jackson et al., 2011). Further, people in prison with intellectual disability are more likely to identify as Indigenous, making them the highest risk group for the co-occurrence of cognitive disability and imprisonment (Baldry et al., 2012; Shepherd et al., 2017).

The disproportionate prevalence of people with disability within prisons highlights several risks and problems. First, many people are criminalised as a direct result of their impairment (Sotiri & Russell, 2020). This suggests that several problems exist with the sentencing process; for example, the Australian Human Rights Commission (AHRC) identified that offenders with intellectual disability are more likely to be sentenced due to discriminatory practices and misunderstandings during police and court procedures (see AHRC, n.d.). Second, compared to other people in prison, people with disability are at an increased risk of social isolation; vulnerability to bullying, coercion, and violence; and difficulties coping (Ellem, 2010; Hellenbach et al., 2017). Third, they may experience negative attitudes or discrimination from prison staff due to a lack of disability awareness (AHRC, 2014). While imprisoned, they also lose access to their essential supports in the community, increasing the risk that their health and wellbeing may deteriorate, and consequently, making reoffending more likely (AHRC, 2020).

Despite recognition that lack of supports increase the risk of reoffending, disability services can be difficult to access in prison and are often inadequate for people's needs (Office of the Public Advocate (OPA), 2021; Victorian Ombudsman, 2015). The NDIS represents a substantial investment in disability services for individuals who have the highest support needs. However, there is confusion and lack of consistency regarding the availability of NDIS services to individuals in prison, with most services being suspended during incarceration (Joint Standing Committee on the NDIS, 2020).

Moreover, significant delays have also been reported in the reinstatement of NDIS packages following a person's release from prison (ACT Government, 2019), leaving individuals without support during the critical period immediately following their release. Further, for people with disability who enter custody without NDIS access, it can be difficult to determine their NDIS eligibility, organise entry to the scheme, and plan supports for release (Sotiri & Russell, 2020). Consequently, people with disability are often left without sufficient disability support while incarcerated and immediately afterward.

Whilst there has been some research on people in Australian prisons with disability (see e.g., Baldry et al., 2013; Bhandari et al., 2015; McCausland & Baldry, 2017), there has been limited research on:

- Adequate screening of people in Australian prisons with disability;
- Service provision for people with disability in Australian prisons; and
- Post-release support.

The study therefore contributes to these areas by drawing from the insights of stakeholders who work with criminal justice-involved individuals with disability.

# Methods

This study draws from 24 in-depth interviews with 28 participants and one written submission from government and non-government stakeholders who work at the intersection of disability and criminal justice systems in the ACT, NSW, and Victoria. Ethical approval was afforded to this project by the UNSW Human Research Ethics Committee HC210578. Interviewees were recruited from three broad groups to ensure a variety of views were captured: (1) criminal justice and/or disability advocacy services; (2) corrections agencies; and (3) disability service providers.

We conducted one-hour interviews with participants between September-December 2021. We asked participants to describe their organisation and their role within it, including a brief career snapshot. We then asked about their involvement with and perceptions regarding:

- people with disability who had been suspected, accused, or convicted of committing a criminal offence;
- the processes used in the criminal justice system to identify a person's disability; and
- the adequacy of services and support for people with disability as they navigated the criminal justice system.

Fifteen interviewees were located in the ACT, seven in NSW, six in Victoria, and one was a representative of a national organisation. The findings presented here draw from the interview transcripts and written submission, which were subject to a thematic analysis. Participants were assured their contributions would be de-identified; in this report, we differentiate participants using their interview number (e.g., P13), giving the jurisdiction and organisation type where appropriate. An overview of our sample is provided below:

Category	Areas / Example	Participants
Government departments	Corrections, human rights commissions, the Ombudsman's office, forensic disability programs, and police	11 (including one written submission)
Community-based organisations	Disability, advocacy, and offender/prisoner organisations, and forensic accommodation services	15
Legal representatives	Community law provider and a barrister	3
Total		29

In the next section we set out the findings of our research. Given the broad and exploratory nature of this study we collected more data than we are able to present in this short report. We therefore present findings around three theme areas. The first concerns the experience of people with disability while they are incarcerated, arguing these are a forgotten group and this has significant implications on wellbeing. The second focuses further on the issue of NDIS services and the degree to which these are available to incarcerated people with disability. As we demonstrate, there is variability in practice across the areas we explored in this study. The final section then explores what happens when people with disability leave prison and the challenges in securing access to and use of an NDIS plan. As we argue, while choice and control is theoretically a positive element of the NDIS, formerly incarcerated people with disability need support to realise the benefits associated with this. We also identify important service gaps that prevent people accessing necessary supports.

# Findings: Part 1 – The forgotten prisoners: The impact of imprisonment on people with disability

In the first set of findings, we explore the experience of people with disability while they are incarcerated. As such, the focus of this part of the findings is on the barriers faced by people with disability within prisons that serve to overlook, compound, and further punish their disability, rather than viewing disability as a cause or explanation for offending behaviour (Ben-Moshe, 2013; Gormley & Watson, 2021).

Drawing from the perspectives of stakeholders who work at the intersection of disability and corrections, our findings show that people with disability are not easily identified and, as a result, tend to have their needs unrecognised. We also show that prisons are generally not equipped to provide the services and support required by individuals with disability. The result is a ‘thoughtless’ (Crawley, 2005) prison environment, regime and culture that simultaneously overlooks, compounds and further punishes disability.

## Australian prisons do a poor job of identifying people with disability

Entry to prison represents a chance for individuals to be assessed for disability. Our findings showed, however, that this appears to largely be a missed opportunity because correctional staff often do not screen or otherwise attempt to identify a person’s disability. Several interviewees commented on individuals with disability who had a long history with the criminal justice system, but a failure to identify their disability or associated needs.

In at least one jurisdiction studied, there were no screening tools or formalised assessments used to establish whether a person entering prison had a disability. Instead, prison staff relied upon self-disclosure; an approach noted as problematic for various reasons. Many interviewees agreed that the refusal or failure to acknowledge one’s own disability was a common occurrence and likely to happen often within prisons. Some people in prison would have a “lifetime of successfully masking a disability” (P03 – advocate), while for others hiding their disability would become pertinent once incarcerated:

**“the last thing [they] want to do is to stand out as possibly having a cognitive impairment, because it makes them incredibly vulnerable”**

(P05 – Chief Executive Officer, criminal justice organisation).

Where people did not self-report their disability, the responsibility fell to corrections staff. Interviewees agreed that identifying a person’s disability was easier when the person had an ‘obvious’ physical disability or were “very unwell or significantly impaired” (P13

– Manager, disability advocacy organisation). However, those with non-visible and non-physical forms of disability or who were “on the margins” with borderline intellectual disability were unlikely to have their disability or disability-related needs identified (P13 – Manager, disability advocacy organisation).

Interviewees also noted this approach was prone to error and likely to result in many prisoners’ needs going unrecognised or appropriately addressed:

**“It’s like trying to guess someone’s age. Maybe one in a 100 [times] you’ll hit the nail on the head”**

(P02 – Manager, prisoners’ organisation).

However, several interviewees in one jurisdiction noted plans were underway to introduce more formalised disability assessment procedures. Improvements like these were considered vitally important to ensure that people with disability do not continue to represent a largely hidden population.

### **Prisons are not set up for people with disability**

Even where a person’s disability was identified or otherwise known to prison staff, interviewees noted there was generally a lack of support to assist them with their needs. For example, several interviewees commented that people with disability were at times housed in protection units or, in cases of people with behavioural concerns or who are perceived to be ‘disruptive’, in management units.

Overwhelmingly, interviewees agreed the best-case scenario for people with disability was, where possible, to be housed in disability-specific prison units that are staffed by individuals with disability training or other relevant qualifications. However, interviewees noted these specialised disability units are not available at every prison and there is high demand for the limited number of beds. Consequently, people with disability were typically housed within mainstream units of the prison. This meant they often had to rely upon their peers for assistance with a variety of daily living tasks, including physically navigating areas or facilities of the prison and providing more personal forms of support such as showering. Interviewees generally felt this was an inappropriate and potentially dangerous situation for people with disability, since it could “create a whole lot of dependencies within the detainee population... and a whole lot of power imbalances” (P06 – senior employee, government oversight agency).

### **Programs are not designed for individuals with disability**

The third theme emerging from interviews related to the modifications (or lack thereof) to prison-based education or behavioural change programs. This was an area where most interviewees agreed improvements were needed, given the lack of individualised assistance provided to prisoners with disability or materials available for them in Plain English.

Several interviewees described how correctional staff play an important role in facilitating a person's completion of education or rehabilitative programs. They explained how prisoners with disability were reliant upon staff to assist them in ensuring they could satisfactorily complete programs they required to in order to apply for parole. Whether such assistance was provided, however, depended on whether the person had a good relationship with staff.

For others, the primary issue lay in the way programs were presented. One interviewee noted that often prisoners were provided with pamphlets or booklets to read in their own time. This approach was cost-effective and "much easier to manage because of this issue of trying to manage populations, [and] moving people around" (P06 – senior employee, government oversight agency). However, it required people to have a certain level of literacy and cognition. As P16 (Victim Support Officer) noted, this "poses a disadvantage to people who have low literacy who are detained, in order for them to participate in the behaviour change programs".

A further interviewee reflected on their experience in prisons approximately 10 years earlier. They hoped that systems had changed since then but noted programs were not specifically designed or developed for people with intellectual disability (P22 – manager, forensic residential services). Instead, they recalled they would "dumb down" material to make it more accessible. From P13's (manager, disability advocacy organisation) perspective, it was not surprising that few resources were available to people with disability since they "are not vote winners."

## Summary findings section 1

Serving a sentence of imprisonment is difficult for most people, however for individuals with disability this experience is likely to be even more severe (Human Rights Watch, 2018). Compared with other prisoners, they are more likely to suffer abuse, neglect, and stigma (Human Rights Watch, 2018), be held in isolation for prolonged periods of time (Ellem, 2019), and experience comorbid mental health disorders and physical health conditions (Hellenbach et al., 2017). As this study shows, current Australian prison systems and structures are exclusionary and serve to further disable this population, ensuring their very existence and support needs often go unidentified and unaddressed. The inadvertence shown toward people with disability results in their systematic oppression, making the experience of imprisonment all the more painful. Until researchers, policymakers and prison authorities become more aware of and sensitive to the needs of people with disability, this group will continue to suffer the effects of various forms of institutional thoughtlessness and its associated harms.

# Findings: Part 2 – NDIS in prisons: Policy and practice

In the previous findings section we argued that prisons are not designed with people with disability in mind and as such this group often experience associated harms. In this section we move on to explore to what extent NDIS services are available to people in prison with disability. We asked interviewees whether people with disability could receive NDIS services in prison (and if so, what types), whether they were aware of this happening in their jurisdiction, and what challenges there might be with delivering NDIS services to a person in prison.

We found that policy permits some NDIS-funded services to be delivered inside prisons, such as transition services related to a person's disability. However, in practice there is variation across jurisdictions and many issues impacting implementation. Some practitioners had been able to organise NDIS-funded services; however, this was not common and often required significant commitment and coordination from practitioners, as well as a facilitative authorising environment.

## Policy responsibilities and the NDIS/mainstream interface

The NDIS is not intended to replicate services already provided by other systems, such as health, transport, education and justice (Council of Australian Governments, 2015). Unfortunately, significant service gaps have been documented resulting from lack of clarity regarding what supports come under universal service obligations or reasonable adjustments required under law for mainstream services, and what is the responsibility of the NDIS (Cowden & McCullagh, 2021).

The 'NDIS (Support for Participants) Rules 2013' (the NDIS Rules) (NDIS, 2013) and the public-facing Justice Guidelines (NDIS, 2021) state that while people are in custody, the criminal justice system is responsible for day-to-day care and support needs and ensuring that infrastructure and services are accessible. This includes making programs, such as those intended to prevent re-offending, accessible for people with disability. The NDIS may fund capacity-building supports to assist a person's transition back to the community (but only those that are required specifically because of a person's functional impairment), some kinds of assistive technology, and training for staff that is related to a person's disability support needs (see NDIS, 2021; NDIS, 2013). Further, it is up to the criminal justice system to decide what supports can be delivered in a custodial setting. For example, the Victorian Government states that the decision about whether NDIS supports can be delivered on site sits with the direction of each individual custodial facility (OPA, 2021).

There has been significant criticism of this interface from both the disability and criminal justice sectors (Joint Standing Committee, 2017, 2020; Legislative Council Legal and



Social Issues Committee, 2022). In response to these interface issues, the National Disability Insurance Agency (NDIA) has implemented some changes, such as publishing the Justice Guidelines referred to above and rolling out a planned 25 NDIS Justice Liaison Officers across the country (Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2021; Joint Standing Committee, 2020). These officers are intended to help justice staff in prisons to understand the NDIS pathway, and work with staff to ensure that potential and existing NDIS participants nearing release have appropriate disability supports in place for their transition back to the community (Joint Standing Committee, 2020).

## Interviewee perceptions and experiences regarding NDIS availability in prisons

Disability supports and services provided by Corrections were generally considered by interviewees to be inadequate, both in general and as a replacement for what could be provided by NDIS plans. Programs were often not sufficiently adjusted to meet the needs of people with intellectual disability. As acknowledged earlier in this report, this disability service shortfall meant daily living support such as showering could be provided by other inmates. Peers also provided support for intellectual tasks such as reading and filling in forms. But for the most part, interviewees felt it was an inappropriate and potentially dangerous situation for people in prison to have to rely upon peer support for their disability needs.

Regarding what NDIS supports could be accessed from prison, six participants were not sure what was permitted or possible, commenting for example that “it’s a bit opaque” (P11c – senior officer, justice advocacy organisation). Some noted this was due to the interplay of state and federal responsibilities, but that they did not understand precisely how this worked, for example P06 (senior employee, government oversight agency):

**“It’s that interaction that seems to be quite complex in what’s available and when NDIS services actually can be delivered”**

P20 (project leader, forensic residential services) had attempted to gain clarity on this issue but had not been successful: “I find it hard to have higher level established connection about this. I’ve raised it.”

A further 11 participants reported that NDIS service delivery does not occur inside prison. There was an understanding that NDIS plans were put on hold or ‘paused’ while people are incarcerated, with the possible exception of physical aids and occasionally pre-release service coordination. There was concern that this also applied to people on remand, who had not been convicted of any crime. This pausing of services linked to reports from many participants that service resumption could take a considerable length of time once people were released, potentially contributing to reincarceration (an issue we explore further in the next section). A state government participant from the disability area said the NDIS had refused to provide services, even for supports such as service coordination that are permissible according to policy:

**“The NDIS has not just been variable, they’ve said no. ...They are really quite bloody minded around, well, while they’re in prison, that’s your responsibility”**

(P23 - Senior government disability advisor).

This could lead to delays in leaving custody through lack of appropriate support arrangements. Seven participants talked about instances of service delivery they were aware of or had helped to organise. They talked of support coordination, occupational therapy, speech therapy, or psychological assessments to ensure that participants’ plans met their needs in preparation for release. P07, a manager from a disability support agency, mentioned that arrangements had changed “significantly over the years” from a total ‘pause’ situation to now allowing for release preparation. However, even those who could organise supports reported considerable variability on what was possible to organise for NDIS participants in custody. P09, who worked for a state-government based disability justice program, commented, “So if you guys can work out the answer, I’d really love to know [laughs]. Like, what is actually supposed to occur?” They went on to say, “it’s primarily based on who the support coordinator is” – with some clients getting “a great level of support through their NDIS package while they’re in custody” and others “whose package completely cease”, with the NDIS saying disability services are the responsibility of the relevant state. Several participants reported that it could be difficult to find support coordinators who would work inside prisons or had the skills to provide that specialised support.

P13, a state-employed public advocate and guardian, also reported positive outcomes from working with a state-based complex needs panel to achieve some NDIS services for an incarcerated person with multiple physical and psychological disabilities. However, this was the first time P13 had encountered an incarcerated person being able to access NDIS support, and they knew of only one other: ‘I don’t know what the percentages are, but it would be a very small percentage I would imagine of prisoners that are getting that sort of NDIS support. I know originally when it first came out and speaking to some of the prison staff that I knew, they’d sort of say, ‘no, we’re not going to allow any NDIS workers in here. That’s not our role. We’re a prison’.

### **Barriers to NDIS service delivery in prisons**

Regarding prison-based service delivery, participants reported that resistance could come from the NDIA not approving certain expenses even though interviewees believed they could or should be allowed. This included expenses from support coordinators and other service providers who decline to operate in custodial environments; or from prison authorities who do not facilitate the delivery of NDIS services on their premises. Victim support officer P16 noted the clash between what a person in prison might need and the operational requirements of the prison, bearing in mind that individual facilities can decide what services can be delivered on their grounds: “I don’t think it’s necessarily anyone saying no, so to speak, but it just actually in practice doesn’t happen.”

There was some evidence that where state-based government staff were employed for the purpose of coordinating interventions for clients with disability in the criminal justice system, this resulted in better service outcomes (while the NDIS has recently rolled out Justice Liaison Officers, these do not work on behalf of individual clients).

Therefore, NDIS service delivery in custodial environments might require a combination of a state-level (justice or corrections) employee advocating for the client, approval from the NDIS for the relevant expenses, a willing support coordinator, a facilitative prison, and other service providers who are willing to operate in a custodial environment. Further, the custodial environment itself works against the 'choice and control' model of the NDIS – without advocacy services, it can be very difficult for people who are told what to do at every hour of the day to get the most of a program where they must choose their own services to help them achieve personal goals (Sotiri & Russell, 2020).

## Summary findings section 2

What we heard from our participants is that NDIS service delivery can occur for people in prison (perhaps increasingly so in recent years) but that it does not routinely happen and can take a lot of work and even luck to achieve. Our findings suggest that in the complex authorising environment of Australian prisons, NDIS service delivery is only possible when advocates and staff are particularly persistent or when multiple factors align to facilitate a particular outcome. Further, some NDIS clients in custody get 'great service' and others receive nothing, so there is inconsistency and inequity in what is possible. This means there is a need to investigate more closely which parts of the system interface facilitate and inhibit the delivery of much-needed NDIS services to prepare people in prison for reintegration into the community. Without targeted intervention, people with disability are missing out on the very services they need to avoid returning to custody.

# Findings: Part 3 – Accessing the NDIS as a formerly incarcerated person with disability

As we argued in Findings section 2, there is some variability in practice concerning the degree to which NDIS services can be accessed while people with disability are incarcerated. In this section we explore issues relating to ability to access the NDIS and use plans once an individual leaves incarceration.

The NDIS aims to enhance choice and control for people with disability eligible for the scheme. Using mechanisms of personalised planning and individualised funding the scheme aims ultimately to foster the participation of people with disability in community, social and economic life. For some people with disability, the NDIS has been transformative, providing appropriate supports to achieve their articulated goals. However, there are some challenges and limitations of the scheme, including the potential to entrench or enhance inequities (Carey et al., 2017) and the difficulties posed by boundaries between the NDIS and mainstream services, such as health and education (Dickinson & Carey, 2017; Yates & Dickinson, 2021). Our findings confirm that a functioning NDIS plan is important not just for the support it provides to individuals, but also because provision of support can help prevent some people encountering the criminal justice system. For those who do encounter the criminal justice system, the provision of support can also help prevent reincarceration post-release. However, formerly incarcerated people experience several issues in accessing the scheme, navigating its complex processes, and using their plans. Despite the promises of the NDIS in providing choice and control, some formerly incarcerated people with disability find this curtailed. This work has implications for the availability of specialist support coordination and advocacy services.

## A functioning NDIS plan is important

Several respondents commented that some people with disability would not have interacted with the criminal justice system in the first place if their disability needs had been met. They felt that when individuals do not have appropriate supports in place it can lead to them acting in ways that bring them into contact with the criminal justice system:

**So, most of the time, the reason that they're in custody is because they've not had the supports that they've needed, so they've resorted to whatever means is necessary, which is generally illegal activity**

(P07 - Manager, disability support agency).

As another interviewee explained: "...a big portion of our clients would not offend if their disability support needs were met and their other needs were met earlier" (P20 - Project Leader - forensic residential services).

### **Difficulties accessing the scheme**

Several interviewees told us the NDIS is difficult to access, which is driven by several factors. Firstly, some people may not know that they have a disability. It is clear there were significant underestimates in the initial modelling for the NDIS regarding how many people had autism and some forms of intellectual disability. Far more people have entered the scheme with these diagnoses than was initially projected (Taylor Fry, 2021). It is therefore likely that there are individuals who do not know that they have a disability and whose behaviours are instead explained as criminogenic characteristics. If you do not know you have a disability then you would not know you are eligible for the NDIS, as one interviewee explained:

People can't get into the NDIS without a functional assessment, and sometimes an IQ test. Frequently people, especially people who are in the prison system who have just skated through as the naughty kid who left school early ... and there's trauma, and so no one really identifies disabilities... Because once they've left the school system, then no one's assessing or testing that stuff  
(P23 - Senior government disability advisor).

Secondly, even if people do know that they have an impairment that meets the NDIS eligibility requirements, forms need to be completed by individuals (and their supporters) and by a range of professionals to evidence this. The administrative burden of the NDIS application process has been extensively documented (Brown et al., 2021; Yates et al., 2021). This often involves the requirement to attend appointments with multiple clinicians. However, not all clinicians are available through the public health system, requiring a person to access private health systems, which can be an expensive and emotionally taxing process:

I mean, going through the processes to be able to get NDIS support is traumatic for people ... you've got to go to this doctor and then this doctor and then this doctor and the government doctor  
(P02 - Manager, prisoners' organisation).

### **Challenges advocating for plan**

Once an individual is deemed eligible for the NDIS, they develop a plan with a planner. This involves capturing the outcomes a person aspires to and identifying the supports they require to achieve these goals. Several interviewees explained that formerly incarcerated people often struggled with this process, as it involves identifying their strengths and limitations and where they need supports. P09, a senior practitioner from a government forensic disability program, emphasised that clients may not understand or be able to communicate their capabilities and support needs without sensitive probing from planners or advocates.

Many NDIS participants take a support person to help them articulate their needs. However, if that individual does not have systemic knowledge, then this is not necessarily helpful:

We do have clients come to us, often through the courts and they will sometimes come with an NDIS plan. So, we get a copy of their plan, and they'll have very, very minimal funding... which doesn't meet any of their disability needs at all. Then when you speak to the client and say, 'well who attended the planning meeting with you?' They'll often say they just went on their own or mum went with them  
(P09 - Senior practitioner, government forensic disability program).

NDIS participants can engage a support coordinator, a professional who will support an individual to help them secure an effective plan. In addition to this, some people had encountered specialist support coordinators who were experienced with people with disability involved in the criminal justice system:

So, it's first of all getting that agreement to be involved in the NDIS, and then really it's working hard. What I've found is that you've got to really get a specialist support coordinator, rather than just the support coordinator  
(P13 - Manager, disability advocacy organisation).

However, these specialist coordinators are not widely available:

**“I honestly find the NDIS, it just depends on the person that you're taking to on a particular day. There is zero consistency”**

(P09 - Senior practitioner, government forensic disability program).

## Challenges in using a plan

Once an individual secures a plan there is often significant work required to enact it and secure the services and supports outlined in the plan. As one interviewee described: “you can't send them off with an NDIS package and think they're going to be okay. Because most of the time they're not” (P08 - Program Coordinator, disability organisation). Participants claimed that many NDIS clients do not know how to use their plans, with one reporting:

It's not uncommon for people to have a plan, but they don't know how to use it... people get plans and they didn't know how to spend the money, so the next time their plan came up, well, you don't need that money because you didn't spend it  
(P01 - manager, advocacy service).

As this quote illustrates, the implications of not using plans are significant. If someone does not spend their care budget, at plan review planners may take this as an indication that these services and supports are not needed, meaning subsequent plans might be reduced.

### Summary findings section 3

Our findings confirm that formerly incarcerated people with disability often do not have access to adequate disability supports, and this has implications for their continuing involvement with the criminal justice system. Moreover, if some individuals were provided with appropriate supports prior to being incarcerated it is probable they would have been prevented from encountering the criminal justice system at all. Despite the 2019 decision to introduce NDIA Justice Liaison Officers (Joint Standing Committee, 2020), there is clearly a gap in the existing system of specialist support to encourage and help individuals to demonstrate their eligibility for the NDIS and then to secure an appropriate plan and navigate the system to arrange necessary supports. This points to a gap in the system with respect to specialist advocacy services that sit within not-for-profit organisations and have in-depth knowledge and experience of this group and the types of issues that they face. In the absence of this, for some we see a cycle where behaviours linked to their impairments lead them to encounter the criminal justice system again and again.

Our findings highlight the need for specialist services targeted at individuals who have previously spent time in the criminal justice system; however, these services are lacking. Further, the ethos of 'choice and control' exists not only for NDIS participants, but also for service providers. There may be little incentive for providers to take on individuals who have behaviours of concern. Given the challenges and complexities of the lives of some formerly incarcerated people with disability, if services can choose not to engage and there is no provider of last resort, they may find it difficult to secure provision of supports, or service arrangements can be short lived. This means that even if funding is secured the appropriate supports may not be provided. In these cases, clients who cannot secure supports may also risk losing funding if it goes unused before their plan is reviewed.

# What can we take from this research?

This study provides important insights into the experiences of people with disability during their interactions with the Australian criminal justice system. It reveals that individuals with disability in prison are often largely invisible to correctional authorities due to inadequate identification processes. Even when people with disability are identified, prisons are not designed to accommodate this cohort and staff are often untrained on how to provide the necessary accommodations to support these individuals. Our study also shows that while the relevant NDIA policy makes clear that some NDIS disability supports may be provided while a person is incarcerated, there remains confusion and inconsistent practices regarding what types of support are possible or permissible. Finally, our findings confirm that a functioning NDIS plan is important not just for the support it provides to individuals, but also because provision of support can help prevent some people encountering the criminal justice system in the first place. Despite this, some individuals, including formerly incarcerated people, experience issues in accessing the scheme, navigating its complex processes, and using their plans.

This research is exploratory in nature and has a series of limitations that must be considered alongside our findings. We set these out below before moving on to explore the implications of our findings for policy and practice and areas that would benefit from further research.

## Limitations

This research drew on the perspectives of professionals working at the intersection of disability and criminal justice, rather than criminal justice-involved people with disability themselves. Future research should focus on individuals with lived experience of disability and involvement with the criminal justice system, given the unique insights they can provide.

While we invited corrective services from our selected jurisdictions to participate in this research, we received only a brief written submission from one corrective services agency. Future research would benefit from their perspective on the steps taken to identify and accommodate prisoners with disability. Finally, our sample size may also have been impacted due to the timing of this study during the pandemic, with some government and community-based organisations unable to contribute due to demands on their time and resources.



# Recommendations

Drawing from our findings we make a number of recommendations.

## Policy and practice

- Better identification of people with disability as they enter prison, including a consistent assessment process.
- Consistent identification of those who have NDIS plans as they enter prison.
- Improved training and development for corrections staff on disability, human rights and supporting individuals in a respectful and non-discriminatory way.
- Ensuring appropriate adjustments are made for people with disability in corrections services and the availability of necessary supports and services.
- Modifying prison-based education and behavioural change programs to ensure they are delivered in Plain English, and Easy Read wherever required, with assistance provided to people with disability to complete the programs.
- Better resourcing of advocacy services (both inside and outside government) to achieve better NDIS planning and service provision for people in prison and post-release.
- Improved clarity of funding guidelines to prevent delays and 'buck passing'. This is particularly necessary in recognition of the fact that behaviours considered criminogenic (and therefore not the responsibility of the NDIS) are often strongly linked to people's impairments and therefore it may not be possible to disentangle the two for the purposes of funding decisions.
- For formerly incarcerated people who may be eligible for the NDIS, expanding numbers of specialist support coordinators so individuals can access and use plans.
- Ensuring that there is a service provider of last resort if individuals are not able to engage providers and expand availability of providers with specialist expertise in working with formerly incarcerated people with disability.

In addition to these practical areas of reform, we also identify several areas for further research.

## Areas for further research

- Future research should focus on the lived experiences of people with disability as they navigate the criminal justice system. There is limited academic research that makes central the voices of people with disability, which can therefore lead to misconceptions about their experiences.
- Further investigation into the types of supports that can prevent individuals with disability from being criminalised due to behaviours associated with disability.
- Further investigation into what would make for more effective experiences and pathways through the criminal justice system to prevent people with disability from being re-incarcerated

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