Victorian Disability Act 2006 review

Submission by Australian Community Support Organisation (ACSO)

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About ACSO

Established in 1983, the Australian Community Support Organisation (ACSO) offers a diverse range of criminal justice programs in Victoria, New South Wales and Queensland, specifically tailored to the most marginalised members of our community. Our programs include pre-release transition-oriented programs, post-release case work, forensic alcohol and drug assessment and treatment, mental health intake and assessment, youth residential rehabilitation and outreach, transition to work for youth, housing programs and forensic disability residential and outreach support programs.

ACSO delivers programs and services to vulnerable and at-risk persons who experience a range of barriers to full participation in their community as well as complex health and social needs owing to the interplay between mental health and/or disability; problematic alcohol and drug use; and offending. We deliver evidence-based multidisciplinary support and intervention in the community and in justice settings; the individuals we support are those who are engaged in the criminal justice system or at risk of engagement.

Consequently, our work sits at the intersection between justice, mental health, disability, alcohol and other drugs, and homelessness. ACSO delivers services from courts, in custodial environments, in the community and in forensic disability residential accommodation. Across our broad range of justice services and programs, ACSO sees individuals at each point of the justice continuum and has identified key areas where there are opportunities to identify, engage and remain available to people impacted by the justice system.

This submission

ACSO recognises that the forensic disability sector has vastly changed since the introduction of the National Disability Insurance Scheme ("**the NDIS**") and welcome the consultative approach that is being taken to review the *Disability Act 2006 (Vic)* ("**the Act**") to bring it up to date for contemporary application. Our response demonstrates our experiences and interactions with the Act, specifically the sections that relate to the section 191(6) criteria, which centres on Supervised Treatment Orders ("**STOs**"). ACSO has delivered services to people with cognitive impairment and other co-occurring disorders for well over three decades and during this time, we have observed first-hand the interaction between the disability and criminal justice systems service systems.

Ultimately, we aim to improve access to services and supports for the people with a cognitive impairment and other co-occurring disorders in the community, whilst attempting to prevent or at the very least reduce future contact with the criminal justice system.

Objectives, principles and definitions

ACSO supports the redevelopment of the Act which adopts a strong human rights and equity focus. The principles of the Act should remain consistent with the human rights enshrined in the *United Nations Convention on the Rights of Persons with Disabilities*, with a particular focus on Article 12 (Equality before the Law) and Article 14 (Liberty and Security of Persons).

The disability landscape by itself is very complex and ACSO acknowledges that the Victorian forensic disability system varies from those of other states. There has been an established service system involving the Department of Fairness, Families and Housing ("**DFFH**") and ACSO operating for over three decades. The service system in Victoria is specialised and acknowledges the diverse and at times complex needs of people with a cognitive impairment, who are interfacing with the criminal justice system. This service system has to date not been formally acknowledged within the Act; however, ACSO notes that other jurisdictions, including Queensland, have introduced targeted legislation, which confirms the treatment, services and supports that people in the forensic disability service system are entitled to receive (i.e. the *Forensic Disability Act 2011).*

ACSO is in support of a nationally aligned and consistent approach to treating, supporting and monitoring the rights of people with disability, who are placed on civil compulsory treatment orders, consistent with the National Framework on restrictive practices, overseen by the NDIS Quality and Safeguards Commission. ACSO is of the opinion that a consistent approach to preventative detention or compulsory treatment in the community (for persons with disability, assessed to present a significant harm to others), is necessary to ensure that there are appropriate safeguards in place in the Act to ensure that all reasonable and necessary services and supports are approved and in place to support people with a disability on compulsory treatment orders.

ACSO would also like to see nationally consistent definitions rather than varied definitions across jurisdictions. While it is important that these terms are defined within the legislation, varying definitions of key terms like 'disability', 'intellectual disability' and 'disability service' lead to greater complexity and confusion. ACSO recommends acknowledging the definition of disability as outlined in *United Nations Convention on the Rights of Persons with Disabilities*. ACSO notes that whilst psychosocial conditions can be considered disabilities, we would also argue that some of the definitions need to go further in acknowledging the impact that addiction and/or trauma can have on individual's life.

ACSO views the review of the Act as an opportunity for the Victorian Government to establish greater certainty with regards to the treatment and supports that people of compulsory treatment must have access to, in order to prevent or at the very least reduce future contact with the criminal justice system. ACSO notes that the current Act may be enhanced via the inclusion of agreed national definitions with respect to forensic disability, specialist forensic disability accommodation, as well as the inclusion of principles and safeguards pertaining to human rights protections for people with a disability.

Inclusion mechanisms

ACSO supports the three inclusion mechanisms in the Act and welcomes the recommendation for greater involvement and representation of people with disability within the Victorian Disability Advisory Council. Strong representation of people with lived experience of disability is similarly required in policy processes, including in the development of both State Disability Plan and Disability Action Plans.

ACSO encourages operating within the principle of intersectionality – exploring and responding to the specific need of people whose identity intersects with other marginalised groups and recommends both State Disability Plan and Disability Action Plans to address the intersectional needs of people who the Act provides for[1], including strengthening provisions within the Act that address systematic inequality and disparities between those with and without disability. An equity over equality focus would assist in shifting negative attitudes towards those in our community who have a disability. Rather than equal access that supports a friendly approach, equitable access explores what is needed for all members of the community to be included fairly in line with accessibility needs.

ACSO encourages the Victorian Government to consider implementing compulsory consultation with people with disabilities, including internal and external stakeholders with disabilities, in the development of both State Disability Plan and Disability Action Plans. This can be implemented for example via the principle of Paid Participation[2] , by engaging the voice of those with lived experience of disability in the design, implementation and reporting of the state's disability plan. ACSO supports the engagement of disability advocates from diverse, priority backgrounds in media campaigns to promote the services of Victorian Disability Advisory Council to the wider community. ACSO also notes it is very important to promote trauma informed approaches and systemic understandings that a person with disability involved in justice system may themselves have a history as a victim/survivor of violence and discrimination.

ACSO encourages the Victorian Government to strengthen accountability mechanisms surrounding the implementation of goals outlined in both State Disability Plan and Disability Action Plans. We suggest that any review of the Act should ensure it is in line with best practice and community interest on these issues. ACSO supports a continuous improvement framework for the development and delivery of services, and a requirement for specific increase targets and support organisations to complete a robust SWOT analysis to anticipate barriers and develop contingency plans to mitigate risks. In ACSO's opinion, it may be necessary to incorporate regular review periods with regard to reviewing and updating the Act to ensure that it informs government policy and planning with regards to accessibility, inclusion and services and supports offered to people with disability. ACSO encourages the Victorian Government to consider a legislative requirement that Disability Action Plans developed by all levels of Government are made available to the general public.

[1] Equity before the law – Towards Disability Justice Strategies, Australian Human Rights Commission, 2014
[2] Enabling the disabled: A proposed framework to reduce discrimination against forensic disability clients requiring access to programs in prison (Birgden, 2016)

Safeguards and Rights Protection

Residential Rights and Community Visitors

For over 30 years, ACSO has provided support services for persons with cognitive impairment engaged in the criminal justice system. Our first Disability Residential Program was established in 1989. Today, ACSO currently operate nine specialist forensic disability accommodation services, housing an estimated fifty people per annum and providing support to those on a range of civil and criminal justice orders including post-sentencing orders, community correctional orders, community treatment orders and the sex offender register.

Our specialist forensic disability accommodation service assist residents to reduce their likelihood of (re)offending by helping them to define their personal goals and find alternative pro-social ways of achieving them. This is achieved by focusing on behavioural and skills strengths, promoting pro-social interactions and relationships with others and maintaining motivation to engage their offence related relapse prevention strategies.

ACSO supports the mechanism of Community Visitors, providing an opportunity for clients to engage and discuss issues. Community Visitors regularly visit ACSO houses, meet clients and draft reports that ACSO responds to. Conducting this important service following the principle of informed practice would enable community visitors even better support the clients. This principle could include information of the following domains:

- Trauma informed practice
- The depth of service provision
- Risks relating to clients
- Limits of funding
- Issues relating to the division of forensic and disability related supports funding

ACSO have developed a disability support model with a forensic lens that allows us to support individuals in a manner that balances the person's right to autonomy, with that of the safety of the community. The model incorporates a 'step down' approach which continually assesses a person's health and wellbeing, alongside the risk they pose to themselves and to the community members.

Our residences are homes for the people we support, some of whom have experienced long term homelessness or frequent housing breakdown. Given the complex nature of the people we support, ACSO has developed a rigorous framework that works to balance the rights of the individuals with the safety of the community. By example ACSO is committed to operating within least restrictive interventions, including:

• Doors and windows are not 'locked' except via the normal means of securing these items for prevention of theft etc. They can be opened by a resident at any time.

• Whilst our service is staffed 24 hours a day, staff are only 'active' between 7am and 11pm. Outside of these hours, staff are available if required (e.g. emergency or illness)

To achieve this, we work closely with our residents to ensure they make informed decisions and are explicitly aware of the consequences of their chosen course of action. Residents are engaged in the development of a safety plan, sign a community access contract before leaving the property to travel into the community, and engage in targeted

cognitive behavioural programs specifically tailored to their risks and needs. We encourage residents to think of the property as their home whilst we work alongside them to increase their independence, promote healthy living and support them to develop new skills and re-engage in positive behaviour and interactions.

Historically there has been little research regarding best practice for the forensic disability population, which places significant challenges on services to ensure that individuals are provided equal opportunities for rehabilitation[3]. With the support of increasing research, our aim is to work holistically with our client cohort, so in the future they can be referred into more mainstream disability support providers and ultimately reduce their reliance on services.

ACSO welcomes further clarity in the Act to outline the responsibilities and roles of each party; state and federal levels. Currently if there is an issue of competing requirements or decisions for a client across different Departments and organisations, there is no clarity for providers such as ACSO as to a hierarchy of who has the authority to make a final determination. Further, the Act does not clearly define under which classification each service comes. For ACSO we have had situations where we have been unable to clearly determine a classification of a certain house under Part 5 of the Act, whether the *Residential Tenancies Act 1997 (Vic)* applies to a particular house or not. It took considerable discussion, time and resource in engagement with Victorian Government to get a determination about the application of these types of sections to our houses as they do not fit within neat categories. More clarity for providers on the application of the legislation in any explanatory notes would be of significant benefit in applying the regulations and requirements.

Restrictive Practices

ACSO supports the Act to have a guiding overall principle of applying the least restrictive practice as possible in the circumstances and that it is applied for no longer than the period of time that it is necessary to prevent the person with a disability from causing physical harm to themselves or another person.

Regarding the authorisation model, ACSO recommends one, not two systems. Forensic disability providers currently undergo double reporting with no added benefit for the client. Currently ACSO staff are required to upload plans to RIDS to get authorisation and then need to separately upload a plan to NDIS Quality and Safeguards Commission Portal. This is a real administrative burden, and again, time away from the actual service delivery and support to clients. Information sharing amongst the relevant state and national organisations would reduce the administrative burden for frontline providers.

Further, the behaviour support practitioners ("**BSPs**") that are external (i.e. service providers other than ACSO, engaged by a support coordinator or NDIS planner) do not have access to RIDS. Sharing and updating this information continuously for external stakeholders also increases the workload of ACSO staff, especially the Authorised Program Officer ("**APO**").

[3] Baldry et al., 2013

ACSO supports the utilisation of independent persons and acknowledges the great importance for any client to have someone supporting them through the process. ACSO's experience is unfortunately that there are often no independent persons available other than paid people. Sometimes a family member or an advocate is available however ACSO clients often have no family available and disability advocacy organisations have long waiting lists. Further, very few professional supports are available that would not have a conflict of interest in performing this role, for example not paid through NDIS funding, and/or not a prescriber of chemical restraint.

This issue has resulted in ACSO not being able to have a BSP approved to administer restrictive practice where this is deemed necessary to continue to manage risk or that discontinuing it would have negative effects on health. Alongside this resulting in problematic client outcomes, unauthorised restrictive processes are administratively heavy, including emergency reporting, incident reporting, follow-up from NDIS Quality and Safeguards Commission and then responding to it.

It is noted that the Office of Public Advocate ("**OPA**") ran a pilot project trial providing independent persons themselves – this initiative was of significant benefit to providers such as ACSO. This initiative ensured the job was done properly by people who fully understand the legislation and the importance of this function. This trial finished in July 2021. ACSO recommends for this to become a permanent available service. This system would ensure a client would have an allocated independent person from the start, rather than provider scrambling to find one every time a behaviour support plan is reviewed/updated.

These situations also demonstrate current care team issues. From the primary provider (APO) perspective, it is frustrating when another service provider implementing restrictive practice are not doing this as per the plan – i.e., isn't providing the service that the Treatment Plan/Behaviour Support Plan lays out. ACSO would welcome clarity and balance in outlining the responsibilities and expectations if a separate service provider is implementing a restrictive practice in the Treatment Plan/ Behaviour Support Plan. The secondary APO (of another service) appears broadly to have little to no involvement in the client's case and there is far less 'pressure' placed on that individual in terms of implementing the plan. This applies particularly to STO clients; it is understood that secondary APOs are not subject to same expectations, responsibilities, and oversight from OPA and the Office of Senior Practitioner ("**OSP**"). Addressing and navigating issues with implementation is another added challenge in this setting.

ACSO acknowledges the challenge of balancing increased monitoring/reporting/penalties with the risk posed to continuous provision of service. It is not uncommon for e.g. community participation service providers to disengage when faced with increased reporting on e.g. environmental restraint.

Finally, it is noted that information requests (often informal) from NDIA also add administrative burden due to need to redact sensitive information from Order related documents.

It is necessary for the right outcomes to be achieved that the appropriate funding resources are made available. Victorian Civil and Administrative Tribunal ("**VCAT**") has noted the impacts this has on the ability of organisations to undertake their role: e.g. if a client's funding is reduced and there is no service, VCAT cannot make an order.

Compulsory Treatment

ACSO supports criteria for admission to a residential treatment facility for compulsory treatment be reconsidered to look at expanding and refining the current criteria in the Act. Literature shows that treatment is more effective in the community, and to this end, ACSO supports adequate funding of community services and residential facilities.

ACSO recommends that consideration be given that the Act be amended to limit the time that a person can be subject to a supervised treatment order. In ACSO's experience, it may be necessary for a more comprehensive review to be undertaken once every five years to ensure that compulsory treatment remains the least restrictive framework possible in assisting the person with an intellectual disability to engage with services, supports and/or treatment that is of benefit.

However, it is imperative that there is consideration by the Parliament around enacting amendments that provide the necessary safeguards to ensure that a person with a disability is not subject to compulsory treatment on an indefinite basis, unless there is clear advice pertaining to this. It may be appropriate that there is an expert panel established to consider such occurrences to ensure that there is appropriate consideration with respect to any future application for an STO. Such a panel may consider the impacts on the persons human rights, particularly with regards to section 32 of the Victorian *Charter of Human Rights and Responsibilities Act 2006*.

ACSO recommends that supervised treatment orders continue to be an option for people who have previously displayed a pattern of violent or dangerous behaviour, particularly where there is a significant risk of serious harm to another person. In the absence of this preventative civil compulsory treatment framework, and the appropriate long-term funded supports, there is an increased risk that people with a cognitive impairment may enter (or possibly re-enter) the prison system – at significantly higher cost to the taxpayer. The preventative element of the framework enables people with cognitive impairment to receive beneficial treatment in a community context in the least restrictive manner possible. The Act retains important safeguards with respect to any associated impacts of compulsory treatment, including oversight from the Victorian Senior Practitioner and monitoring and review by the VCAT.

The supervised treatment order framework is currently reviewed for relevant participants at a minimum of once every 12 months by the VCAT, thus providing a process for ensuring that there is proper consideration with regards to the 191(6) criteria of the Act and the necessity to subject the person to a further period of compulsory treatment.[4] In other words, a future application for a supervised treatment order or an application for revocation of the supervised treatment order (where circumstances apply) must be considered by VCAT at the scheduled time of review.

Further, ACSO recommends there to be a separation between a service provider and the applicant for STO (APO). The Act presently requires that a service provider appoints a person with appropriate skills and qualifications to the

[4] Section 154(1)(b) specifies that the supervised treatment order must be reviewed "*at intervals of not more than 12 months since the last review of the treatment plan by VCAT— apply to VCAT for a review of the treatment plan.*"

APO, which holds statutory responsibilities with regards to supervised treatment orders and restrictive practices. In ACSO's position, the APO is placed in a challenging position in terms of applying for compulsory treatment, given that the organisation that they represent is generally providing services and supports in line with the Act and the persons NDIS plan. In ACSO's experience, this arrangement creates a challenging environment both for the person with a disability and the organisation, which may increase the risk of placing the therapeutic relationship in conflict.

ACSO recommends statutory responsibilities to be separate from service provision responsibilities, to allow for more independence and increased objectivity. Decision-making around applications for STOs is of concern and of interest to ACSO, given our experiences since introduction of the Act in 2007. APO is a position that shoulders a high level of responsibility of persons' treatment resources and treatment and decision making. APO also is supporting the individual to progress to transition of lower level of supervision.

ACSO recommends that the safeguards that apply (Senior Practitioner and VCAT) remain in place, and that both the Act and the Victorian *Charter of Human Rights and Responsibilities Act 2006* are expressly considered in the decision-making. Overall, ACSO welcomes more clarity to the Act and recommends clarification and distinction of definitions e.g. regarding serious harm, and types of actions and behaviour that may constitute serious harm. Further clarity of the definitions would diminish unnecessary litigation that always comes at cost (monetary and/or personal), to all stakeholders involved.

ACSO recommends clarification and distinction of definitions regarding serious harm, (dangerous vs violent) and types of actions and behaviour that may constitute serious harm and a clarification of the types of assessments and the frequency of the assessments required in order to guide VCAT in identifying whether the evidentiary requirements of s191(6) of the Act are met. Clarity of the definitions would diminish unnecessary litigation that always comes at personal cost, not only for the client but also for the service provider staff.

This concerns balancing compulsory treatment and monitoring impact on human rights. ACSO is in the nexus of stakeholders and often finds itself responding to matters that are outside its control. To this end, it is noted that forensic disability service providers such as ACSO are relatively small, and their support and advice structures are relatively thin.

Forensic disability services and sentencing

Understanding the individual from forensic and disability points of view

As literature confirms, there is a disconnect between disability supports and prison system. It is ACSO's observation that forensic sector clients have more plans and assessments when compared with clients in other areas, e.g. AOD or mental health. ACSO acknowledges that these cases are complex and need multi-disciplinary assessments.

There remain challenges in identifying people with cognitive impairment and intellectual disability in custodial settings. Despite the transition to the NDIS, there appears to be fragmented approach to identifying and responding

to the diverse and complex needs of this cohort. For instance, the NDIS' framework is focused on the person's disability, in the absence of the person's assessed risks. The challenge at present is that whilst there are services provided to people exiting the prison system these tend to be time limited and focused primarily on the assessed reintegration needs of the person. ACSO supports the Victorian Government to examine not only legislative requirements but also needs to consider the corresponding provision of appropriate funding for providers to ensure the intent of the legislation is able to be implemented and actioned.

ACSO recommends that there is an enhanced interface between the disability and criminal justice systems to ensure that the persons disability, assessed risk and reintegration needs are met in a holistic and targeted manner. It is imperative for a person with a disability to have a single, comprehensive plan, which details what their assessed needs and risks and how these needs will be responded to.

Within ACSO clientele the repercussions of lack of early intervention support services are visible and contributes to their contact with the criminal justice system. It is of critical importance that service systems, including the child protection service system or youth systems and the adult disability system create appropriate linkages at an appropriate juncture in time, particularly with regards to ensuring that the person with a disability receives consistency in care planning and continuity in care. A fragmented service delivery approach may lead to poor service outcomes for the person with a disability and may in some cases increase the risk of future contact with the criminal justice system.

Equally, it is important that there is a person-centred approach adopted to responding to the individual's needs. The current justice process predominantly focuses on the individual's criminogenic needs but does not necessarily take into consideration the assessed adaptive functional or behaviour support needs, which may be as a result of their disability and other co-occurring disorders. A disability focused assessment report, in turn, outlines the diagnosis (eg intellectual disability), its symptoms and manifestation, (eg. limited cognitive processing) and how these impact the functional capacity of the individual (eg. extremely low level of verbal comprehension).

Without disability focused reports, funding and referrals to disability supports are out of reach. Without disability supports, the behaviours of concern escalate. By the time of transition, the risk of homelessness, risk to community and to self is therefore multiplied. Individuals referred to ACSO typically have no assessment reports properly identifying their disability, symptoms, or their impact on the individual's functional capacity. The absence of disability focused reports makes the designing of appropriate disability supports and applying for NDIS funding extremely challenging and leads to delays. When a service provider, on behalf of the client, submits a forensically aimed assessment report to the NDIA for disability support funding, the NDIA is quick to point out that it does not fund forensic needs; only disability needs, and seeks to attribute a broad range of behaviours of concern to a forensic realm. In order to enable the NDIA to make an evidence-based disability support decision, the report needs to establish the disability as outlined above, examining the condition's impact on the person's functional capacity, including behavioural regulation, solely from disability point of view.

It is recommended that the existing programs such as Justice Liaison Officer program are also strengthened. Further, it is suggested that a process involving mandated assessment focused on the individual's disability, functional capacity and support needs would assist the client to receive adequate disability supports at earlier stage in the process. Seamless cooperation and minimised delays would benefit the client, Victorian Government and other stakeholders.

Established official communication pathway between the NDIA and disability service providers

ACSO recommends an **established official communication pathway between the NDIA, DFFH, and disability service providers**. Broadly, a **more seamless care team operation with** people with disability support needs and with other co-existing complex needs i.e. criminal justice, AOD, mental health etc. is urgently needed. Whilst there has been some movement in this area (i.e. NDIA's complex support needs pathway), there is still progress to be made. Allowing for increased flexibility would mean increased community safety and better outcomes for the people involved. For this to occur **there needs to be formal agreement between Justice and Health departments at a State level, and the NDIA**, to allow the delivery of specialised support to occur in a more seamless and integrated fashion.

Lack of clarity around who funds supports related to Supervised Treatment Order and other community-based offence-targeted supports under the NDIS funding model

Drew* has a mild-moderate ID; pattern of serious sexual offences, limited adaptive social supports and is highly institutionalised. Drew receives residential services under a Supervised Treatment Order (STO) framework and has a risk rating of Moderate-High. Drew was referred to ACSO's residential services, under a STO (civil). Residing in our service meant that Drew was able to avoid a higher restrictive (and possibly counter therapeutic) Supervision Order. ACSO were advised upon Drew's referral that, due to the level of progress made, Drew would only require 6-month STO to allow a graded approach to reducing supervision and support community re-engagement.

NDIS are yet to provide adequate funding to support Drew in executing services under the STO leading to reduced capacity to exercise choice and control and increased level of risk in the community. By example:

- Drew was called on the phone to consider goals and areas for funding. There was minimal consultation with service providers regarding his needs and areas requiring support.

- The conditions of his STO require funding for outreach to allow Drew to progress through step downs, however this is yet to be provided.

- Drew's STO also determined that a communication assessment was required, similarly this funding is yet to be provided.

As a result, Drew remains under a high level of supervision and is unable to be supported in community programs due to the lack of funding. Understandably, Drew is presenting as increasingly frustrated, and oppositional towards staff. This in turn impacts his risk profile, which appears to be increasing (further compounding the problem as due to dynamic risk, step downs become inappropriate).

Sector wide framework - comprehensive best practice guide

ACSO believes the development of a **sector wide framework** would support people with disability support needs engaged with the criminal justice more effectively. A **comprehensive best practice guide** that allows service providers to all have prescribed methods of how to work with a person who fits into the scope of forensic disability. What is needed is simply better linkages to **disability and mainstream services** across the board, including employment, housing, and mainstream education. It is noted that better linkages are also required ***within*** the disability sector. This would allow for more effective support, increased accountability and in turn better outcomes for the people involved.

To this end, ACSO supports a sector wide framework that operates not only under the guiding principles of therapeutic jurisprudence, but also those of Case Coordination, Throughcare, and Strength-based Case Management.

Case Coordination and Throughcare

Case coordination or integrated case management involves identifying and connecting existing networks of specialist and support services across various sectors to coordinate support around an individual[5]. For example, case coordination to address aspects of desistance may involve government housing agencies, specialist housing providers, mental health specialists, health departments, rehabilitative programs, employment agencies and family support providers, among others. This level of coordination across departments, agencies and sectors is a challenge, and requires strategic collaboration, local coordination and consent-driven information sharing agreements between all agencies and organisations[6].

Throughcare refers to case coordination that occurs consistently from the earliest point of contact with the criminal justice system and delivers assertive support at the time of release and throughout the vulnerable transition period in the community after release. Throughcare and intensive case coordination have been identified in the literature as promising in their ability to promote healthy community re-entry and reduce recidivism[7].

Strength-based case management

Even when high degrees of coordination and collaboration exist between departments, agencies and organisations, navigating and connecting to these networks is a challenge, particularly after a period of incarceration. To mitigate

[5] Ministry of Justice, 2015

[6] Ministry of Justice, 2015

[7] Borzycki & Baldry, Promoting integration: The provision of prison post-release services, 2003

this, strength-based case management practices have shown promising implementation outcomes[8]. These practices are modelled after the Good Lives Model, which asserts that most people do genuinely want to live lives free from offending, with healthy social interaction and community participation. The role of the case manager is to provide collaborative advocacy and assertive outreach to promote the strengths and values of the client within the broader network of supports and resources[9]. The Good Lives Model of strength-based case management works well in conjunction with other aspects of effective person-centred interventions, including risk-need-responsivity frameworks.

Criteria and reporting

It is ACSO's observation that the sector would benefit from reporting uniformity, especially in relation to incident reporting. There is a need to acknowledge that the criteria of a specialised forensic disability service for a 'serious' incident can be different to that of a provider in the wider disability sector. It is understood that the NDIS Quality and Safeguards Commission does not utilise a scale classifying severity of incidents. This causes ambiguity and relates to the issue of duplication of reporting, which is not sustainable, as outlined above.

In relation to access criteria for forensic disability service, it is noted that people in prison have different support needs to what they do in the community. This can make assessment and planning for future settings very complex. ACSO identifies a need for agreed parameters applicable to justice clients and an approach that is collaborative.

Training and upskilling mainstream disability support service providers

Allowing for **reputable and specialised service providers to train and upskill mainstream disability support service providers** would be another beneficial initiative. ACSO currently provides training within this area to government bodies, and occasionally service providers and allows for similar approaches to occur. The only limitation is the funding allowed for organisations for specific training is generally low.

From our experience, and through feedback from the people we support, and those with complex needs (including engagement in the criminal justice system) are often excluded from mainstream services as well as non-profit programs due to their actual or perceived complexities. One striking example that ACSO has previously witnessed frequently is that a client is denied alcohol and drug (AOD) treatment as AOD providers do not believe themselves to be equipped to support the disability and forensic needs or the level of risk.

In a classic catch-22 situation, mainstream and other supports will decline a service request because a person's disability cannot be managed, and disability providers decline to provide supports support until other needs, AOD in the case of the above scenario, are met. Similarly, ACSO's clients have been turned away from housing and health support services with reasons ranging from exclusion due to disability, mental health and criminal history. In all cases,

[8] A Strengths-Based Approach to Prisoner Re-entry, 2015

[9] A Strengths-Based Approach to Prisoner Re-entry, 2015

we have been led to believe that the exclusions are based on the inability of the services to support our clients in a manner that will ensure the safety of their staff, other residents and the person themselves.

ACSO has had numerous scenarios of a person experiencing a crisis, and NDIA stating that they need to be referred to the relevant emergency and crisis services. For example, if a person becomes homeless over the weekend or engages in high-risk behaviour outside of hours, it is not the responsibility of the services funded through the NDIS to manage or respond. Rather, people are directed to access mainstream supports, with the constant messaging that the NDIS will not duplicate services that are already funded in the community.

ACSO recognises that specialist agencies need to take the lead when a person is displaying behaviours of significant concern, and we are open to working with mainstream disability providers to train their staff and act in the role of consulting when preparing for how best to build a person's capacity alongside their justice order.

When working with this cohort, ACSO frequently receives referrals for individuals in significant crisis, leaving custody or highly likely to be returned to custody. This can be a result of poorly planned and implemented interventions, lack of coordination between the service providers, family members and the person involved or other areas of instability with the person's life.

It is operationally difficult to intake a person at this stage, due to the risk they pose to themselves, our staff and the community. If specialist support organisations were better equipped in using frameworks such as Positive Behaviour Support (PBS), Trauma Informed Practice (TIP) and Risk Needs Responsivity (RNR), and funded adequately, we would see scenarios as listed below less frequently.

Funding model needs to be cognisant and responsive to models of 'good practice' in supporting intellectually disabled people who offend in the community

Bob* is a 19-year-old client with mild-moderate intellectual disability and autism spectrum disorder living as sole tenant in DHHS (Vic) funded property. Bob has history of engaging in aggressive behaviours targeting family members, and members of the community and absconding. Numerous charges have been laid against Bob, but later withdrawn due to his level of disability. Bob's behaviour and risks towards staff increased, resulting in staff being assaulted. This led to an increase in restrictive interventions such as: Property staffed 24 hours at 1:2 and later 1:3 ratio; locking of internal and external doors, boarding up glass windows to prevent escape, removal of access to bedroom – instead sleeping on mattress in loungeroom to prevent escape. Due to these restrictions, Bob's behaviours escalated.

Service providers pulled out due to risk, and an inexperienced and unspecialised provider was introduced in a reactive "crisis oriented" manner to fill the service gap. There was limited time for planning or transitioning with the new provider who were equally placed at risk. ACSO was approached to "fix it" and consult and make recommendations regarding behaviour support and service delivery models. Assessment process riddled with barriers including:

• lack of communication between service providers and members of care team – under NDIS model, providers are often not aware of the other funded providers in the clients NDIS Plan and care team or case conferencing is not explicitly funded.

• lack of information exchanged between members care team. Indeed, it appeared that NDIA case coordination lacked historical information on client, including history of service provision and interventions etc.

• Upon completing assessment, it was identified that restrictive practices appeared to be implemented in unregulated manner, resulting in excess levels of restrictions on client's movements and rights, and possibly contributing to (re)traumatisation of client.

• Notification and consultation requested from OPP which resulted in investigation, and multiple services withdrawing from case. No providers remained to secure involvement or those with appropriate experience would not do so due to concerns regarding his risk posed to the organisation subsequent to poor resourcing and inability to do what is required with resources provided.

Outcome: services withdrawn, resulting in increased instability for client (known factor for increasing challenging behaviours), client moved to another property deemed unsuitable and without planning or transition process, resulting in significant amount of change (again another known factor for increasing challenging behaviours). Unclear whether current charges will proceed. Client needs and goals appear lost in process.

Conclusion

ACSO remains committed to the delivery of high quality supports to people with disability accessing our services. We welcome the current review of the Act to ensure it appropriately safeguards and meets the needs of persons with a disability into the future.

As a provider of services to persons with disabilities (predominantly those with high and complex needs) for over 35 years, ACSO is acutely aware of the impacts resulting from the introduction of the NDIS on participants and service providers. While the introduction of the scheme has improved choice and control for participants, further improvements can be made to safeguard participants and preserve therapeutic relationships with participants and service providers (for example, by separating the statutory role of Authorised Program Officers from NDIS service providers and developing the roles of Independent Persons and Community Visitors).

ACSO strongly asserts that a national approach is required to supporting people with disability, removing the duplication of reporting and inconsistent processes between both state and federal authorities. Decision making and dispute resolution authority should be clearly defined in legislature and policy. In addition, the interface of Disability and Justice services continues to disadvantage people with disability involved in the criminal justice system, detracting from a truly person-centred approach and fragmenting a person's supports into 'disability' and 'justice'

siloes, while these are often inextricably linked. This fragmentation and lack of clearly defined responsibility for the 'whole person' should be addressed through clear and formalised agreements and communication pathways between the Victorian Department of Families, Fairness & Housing, the National Disability Insurance Agency, and disability service providers.

ACSO looks forward to future improvements to the Disability Act Victoria (2006) and welcome the opportunity to collaborate further to safeguard the rights of persons with a disability in Victoria, particularly those impacted by the justice system.