Disability Justice Plan
for Tasmania 2017-2020

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# Minister’s Foreword

The Hodgman Liberal Government is committed to improving our justice system to make sure that all Tasmanians have access to an efficient and effective justice system.

For people with a disability, many continue to face barriers in accessing these services. This includes seeking adequate protection from violence, abuse or neglect, or understanding and accessing formal legal and court procedures.

The *Disability Justice Plan for Tasmania* (the Plan) brings together many existing commitments across the justice system and supplements these with further targeted strategies.

The aim is to improve access to justice services for people with disability and to remove unnecessary roadblocks when seeking justice.

The Plan seeks to address the underlying contributors toward offending behaviour in circumstances where people with disability come into contact with the criminal justice system and improve equal protection by the law for those who are victims of criminal behaviour.

We know there is still a lot more to do and I am confident this Plan will deliver improved outcomes for people with disability in Tasmania.

**Hon Elise Archer MP**

Minister for Justice

# Introduction

Every day many Tasmanians interact with the justice system, whether reporting an incident to police, appearing in court or seeking the assistance of services provided by Tasmania’s justice agencies.

People with disability often experience barriers to accessing justice services because they are not identified as requiring additional assistance, or because the modifications or supports they require are not available.

The *Disability Justice Plan for Tasmania* aims to improve recognition and responses to disability across Tasmania’s justice system.

The Plan comes at a time of change in the way in which the needs of people with disability are viewed and addressed. The National Disability Insurance Scheme, for example, is resulting in significant shifts in the way in which people with disability interact with government services.

It also comes at a time of change in approaches to justice services. There is a greater focus on rehabilitation and reintegration of offenders and diverse strategies for keeping the community safe.

This Plan aims to generate a change in the way disability is identified and thought about in the justice system and to lead to more seamless service delivery arrangements and greater ease in dealing with the diversity of client and users’ needs.

Implementation of the Plan will involve people with disability. The Premier’s Disability Advisory Council will monitor progress. Agencies and service providers will continue to engage with people with disability to take agreed actions forward.

This plan sets out strategies for improving disability access and services in the justice system. It therefore does not reference the many current and planned initiatives agencies are pursuing with respect to disability services outside of the justice system. It is important to recognise that all agencies are currently committed to improving disability access and services.

Government agencies and service providers will work collectively and collaboratively in implementing the strategies identified in the Plan. An Action Plan has been developed, which provides more detail of the timeframes for achieving results, and is available on the Department of Justice website.

# Context

## Objective

Our objective is to develop a justice system in Tasmania that is responsive to the needs of people with disability and provides equality before the law and equal access to justice.

## Scope

The Disability Justice Plan uses the definition of persons with disabilities set out in Article 1 of the United Nations *Convention on the Rights of Persons with Disabilities* which was ratified by Australia in 2008:[[1]](#footnote-1)

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others

Cognitive disability is included in this definition. Cognitive disability is an umbrella terms that encompasses a wide range of conditions such as acquired brain injury (ABI) and foetal alcohol syndrome disorder (FASD).

Disability may be permanent or temporary. Equally, it may be episodic in nature. It may also be visible or hidden.

# Legal and Policy Framework

## International Human Rights Law

The *Convention on the Rights of Persons with Disabilities* recognises that all people are equal before the law and are entitled without any discrimination to equal protection and equal benefit of the law.[[2]](#footnote-2) This includes ensuring effective access to justice on an equal basis with others and the provision of procedural and other accommodations in order to facilitate their participation in the justice system. It also requires parties to take all appropriate measures to protect people with disabilities from exploitation, violence and abuse.

## Discrimination Law

Discrimination law requires services and facilities to be provided without discrimination on the basis of disability. Both the *Disability Discrimination Act 1992* (Cth) and the *Anti-Discrimination Act 1998* (Tas) requires government to ensure it does not discriminate against people with disability in the provision of facilities and services and in the administration of laws and programs.

## National Disability Strategy

Policy Direction 2.5 of the *National Disability Strategy* requires governments to develop:[[3]](#footnote-3)

More effective responses from the criminal justice system to people with disability who have complex needs or heightened vulnerabilities

## Tasmanian Disability Framework for Action

Areas for Action 2.4 and 2.4.1 identified in the Tasmanian *Disability Framework for Action* include:[[4]](#footnote-4)

2.4 Provide more effective responses from the criminal justice system to people with disability who have complex needs or increased vulnerabilities

2.4.1 Improve support for people with an intellectual disability, cognitive impairment or mental illness in, or at risk of entering, the criminal justice system, and on leaving it

In addition, the *Disability Framework for Action* identifies other commitments to improve access to justice for people with disability, including:

2.2.2 Maintain and strengthen protections and supports for people with disability who experience or are at risk of experiencing violence, sexual assault, abuse and neglect.

2.3.1 Ensure people with disability have every opportunity to be active participants in the civic life of the community – as jurors, board members and elected representatives.

2.3.3 Support independent advocacy to protect the rights of people with disability.

# Ensuring that services are disability readyand responsive

People with disability are highly vulnerable to a wide range of legal problems. They are often significantly over-represented in the criminal justice system both as offenders and victims.[[5]](#footnote-5)

Disability-specific services are important, but alone cannot address the needs of people with disabilites in the justice system. Mainstream services must also be disability sensitive and responsive so that they can meet the needs of people with disability in an effective, efficient and non-discriminatory manner.

Important work has already commenced in this area. The Improved Support for Students with Disability Ministerial Taskforce was established in June 2014 to address barriers facing students with disability and their families in mainstream education. At the same time, the Rethink Mental Health Plan will assist in promoting greater awareness of mental health issues and strategies to promote prevention and early intervention. Implementation of the NDIS will also provide greater clarity about the obligations of service delivery systems to improve the lives of people with disability.

Success in service-delivery responses is built on the provision of integrated, cross-sector support services that meet multiple, complex, whole-of-person needs. This means services need to promote seamless inter-sectoral transitions, such as the transitions between health, social and justice services. Clients should not have to repeat their history and circumstances to each new service they have contact with or within services, and there should not be gaps in the continuum of care.

|  | Actions | Lead Agencies |
| --- | --- | --- |
| 1 | Improve the justice system’s capacity to recognise an individual’s disability at the earliest opportunity and make available appropriate supports and adjustments to enable them to participate in those services on an equitable basis with others | All  |
| 2 | Improve the collection of information about the disability status of people in the justice system and promote increased information sharing between service providers for those who have complex support needs | All |
| 3 | Improve the provision of information to people with disability about services available to them in the justice system | All |

# Preventing and responding to violence, abuseand neglect

People with disability disproportionately experience violence, abuse and neglect across a range of settings, including in institutional and residential environments.[[6]](#footnote-6) In many cases the circumstances are such that the behaviour they experience would be criminal in any other context. Particular attention is therefore required to ensure that legal and other frameworks are in place to provide protection and to ensure that where incidents occur the rights of the affected person are upheld.

There is a need to increase training and awareness of rights protection as a key step toward achieving equality before the law for people with disability. Families, carers and people who work in service systems equally require a practical understanding of the rights of people with disability to be afforded fair and equal treatment. Families and service providers require appropriate supports to ensure that rights protection is achieved.

|  | Actions | Lead Agencies |
| --- | --- | --- |
| 4 | Establish, maintain and implement robust rights-based procedures and related mechanisms to prevent and address violence, abuse and neglect of people with disability | Health and Human ServicesTasmania Police  |
| 5 | Increase awareness by people with disability of their legal rights | All |
| 6 | Develop quality assurance and safeguarding measures as part of NDIS implementation | Health and Human Services |
| 7 | Introduce enhanced screening procedures for people working or volunteering with people with disability | Justice |
| 8 | Provide support to victims and witnesses with disability to give evidence in court and to deal with the personal and practical impacts of crime | Office of the Director of Public ProsecutionsVictims Support Services |
| 9 | Review and if necessary amend any legal barriers to the prosecution of offences involving violence, sexual exploitation, abuse or neglect against people with a disability | Tasmanian Law Reform Institute |

# Responding to the needs of people with disability who are at risk of experiencing family violence

Research indicates that people with disability are almost twice as likely to experience family violence and they are also likely to face a number of barriers to having that violence dealt with appropriately.[[7]](#footnote-7) These may include:

* lack of access to information about where to report
* failure to understand what has happened is a crime
* fear of retribution
* fear of not being believed or being seen as lacking credibility
* communication barriers

Under the auspices of the *National Action Plan to Reduce Violence against Women and their Children 2010–2022*, Commonwealth and State and Territory jurisdictions have developed a coordinated framework for reducing and responding to violence against women and their children.

The *Third National Action Plan 2016–2019* released in November 2016 identifies a range of national priority areas for action, including strategies to improve access to support and justice services for women with disabilities.[[8]](#footnote-8)

|  | Actions | Lead Agencies |
| --- | --- | --- |
| 10 | Improve support to people with disability who experience or are at risk of family violence | JusticeTasmania Police  |

# Safeguarding the rights of people with disability to make decisions that affect their lives

There is a range of laws and legal frameworks affecting people with disability that include tests of a person’s capacity to exercise legal rights or to participate in legal processes. These include:

* defendants in criminal proceedings and the determination of whether a person is fit to stand trial;
* parties to civil proceedings and consideration of whether to appoint a litigation guardian and their role;
* witnesses in criminal or civil proceedings including giving evidence as a witness and/or consenting to the taking of forensic samples;
* potential jurors, including qualification for jury service.

Under the law, professionals (including those providing legal services) must presume that every adult has capacity unless specific assessment processes demonstrate otherwise.

While special arrangements are provided in law for situations where an assessment demonstrates that a person lacks capacity to make particular decisions, adherence to the principle of capacity rests on the presumption that a person is able to make decisions about things that affect their life or will be supported to do so in all but the most extreme circumstances.

|  | Actions | Lead Agencies |
| --- | --- | --- |
| 11 | Support people with disability to make decisions that affect their lives to enable them to exercise their legal rights and participate in legal processes | All Agencies  |

# Providing access to advocacy and communication support

It is critical that people with any form of disability, including intellectual disability, have access to independent advocacy and communication support to ensure they are able to communicate their views and needs and that their human and legal rights are upheld.

In 2016, the Tasmanian Law Reform Institute (TLRI) began a review of the feasibility of instituting a communication assistant/intermediary scheme in Tasmania for people with complex communication needs.[[9]](#footnote-9) Issues examined by the TLRI include:

* alternative models for such a scheme;
* options to amend existing statutes to institute any reform; and
* systemic infrastructure required for any scheme to be implemented.

The TLRI review focuses on complainants, witnesses and suspects. It examines the need for communication assistance for people from point of complaint or charge through to trial. It is envisaged that such a scheme would be made available to a range of vulnerable persons, including children and people with disability who have complex communication needs.

The outcomes of the TLRI review will be critical to the way in which justice services are made available to many people with disability who have communication difficulty. Accordingly, it is recommended that the outcomes of the TLRI review play an important strategic role in the development of new approaches to the delivery of justice services to people with disability in this State.

|  | Actions | Lead Agencies |
| --- | --- | --- |
| 12 | Ensure access to advocacy and communication support for people with disability in the justice system. | All  |

# Developing disability responsive legal services

Many people with disability who come into contact with the legal system rely on income support or are otherwise financially disadvantaged. They cannot afford commercial legal services and are reliant on the availability of public legal services to meet their needs, including Legal Aid, pro bono services and community legal centres.

Even where people with disability are able to afford the cost of private legal services, other barriers remain. The capacity of legal service providers to take instruction from clients with communication barriers and the need for communication assistance continue to be of concern to many people.

Legal services are subject to discrimination law and, as such, are obliged to provide non-discriminatory services. Despite this, in many instances the cost of providing adjustments is viewed by the service provider as an unjustifiable hardship and/or the cost of providing such adjustments is seen by the legal service provider as one that should be met by the client.

While access to justice must involve representation and other specialised legal responses, the provision of legal information, advice and community education services as a strategy in improving access to justice and increasing understanding of legal responsibilities is valuable.

|  | Actions | Lead Agencies |
| --- | --- | --- |
| 13 | Ensure that legal aid and legal assistance services are responsive to people with disability | Legal AidCommunity Legal Centres |
| 14 | Improve the availability of legal information and advice services for people with disability | Legal AidCommunity Legal Centres |
| 15  | Identify alternative strategies to enable people with disability to address unpaid fines | Justice |

# Promoting disability responsive police practices

Police play a pivotal role in interacting with people with disability, particularly at first contact with the justice system. This includes intervening to protect people with disability who may be at risk of harm or the victim of violence or abuse. Police are also often called as first responders in situations where a person with disability may be engaging in unpredictable or inappropriate behaviour. As such, police have a significant influence on how people with disability interact with the justice system.

Equipping police to recognise the possible presence of disability at first point of contact and understanding what effect the disability may have as well as the adjustments to procedures that may be needed has the capacity to significantly improve the way people with disability experience the justice system.

|  | Actions | Lead Agencies |
| --- | --- | --- |
| 16 | Enhance the capacity of police to recognise, understand and respond appropriately to people with disability through the development of a relevant policy document | Tasmania Police  |
| 17 | Train police in recognising and responding to people with disability as victims, offenders, witnesses and generally | Tasmania Police |

# Implementing disability responsive prosecution services

Concerns arise from the failure to provide information to prosecution services about an alleged offender’s disability at either the charging stage or on receipt of the file in police-charged cases. This failure may mean that the person with disability is disadvantaged because the full details of their background will not necessarily be known and may not be taken into account at a crucial stage in the criminal justice process.

|  | Actions | Lead Agencies |
| --- | --- | --- |
| 18 | Ensure prosecution services are aware of the disability status of alleged offenders | Tasmania PoliceOffice of the Director of Public Prosecutions |
| 19 | Develop policy on use of video recorded witness statementsfor use in evidence | Office of the Director of Public Prosecutions |

# Adopting disability responsive court processes

The accessibility of courts and court processes is highly relevant to ensuring access to justice for people with a disability as victims and/or defendants.

Court procedures need to be as flexible as possible to meet the individual needs of a person with disability. This includes ensuring that adjustments are made where needed to things like the timing of the case listing, the amount of breaks allowed or provided, the accessibility of the venue, and the ability to access and use communication devices and other relevant supports.

The availability of therapeutic jurisprudence approaches, such as the Diversion List, is critical to addressing the particular needs of offenders with disability. It provides opportunities to break the cycle of offending and prevent the escalation of criminal behaviours.

|  | Actions | Lead Agencies |
| --- | --- | --- |
| 20 | Enable adjustments to court procedures to accommodate people with disability as victims, witnesses or offenders | Magistrates CourtSupreme Court  |
| 21 | Provide communication assistance for people with disability when it is required | Magistrates CourtSupreme CourtDPP |

# Implementing disability responsive youthjustice services

All children who come into contact with the youth justice system are vulnerable by virtue of their age and developmental immaturity. Many however, have additional vulnerabilities, including as a result of having impairments. It is well established that children who offend have more complex health and support needs than other children of their age. The health and wellbeing needs of these children tend to be particularly severe by the time they are at risk of receiving a community sentence, and even more so when they receive a custodial sentence.

High numbers of children who offend have health, education and social care needs which, if not met at an early age, can lead to a lifetime of declining health and worsening offending behaviour, with significant long term costs to the taxpayer and to the victims of these crimes.

|  | Actions | Lead Agencies |
| --- | --- | --- |
| 22 | Consistent with the Youth at Risk Strategy, the development of a Vulnerability/Wellbeing Assessment Tool that will be used to earlier identify the needs of vulnerable young people in Tasmania | Health and Human Services |
| 23 | Consideration of national and international research to develop an improved understanding of Foetal Alcohol Syndrome Disorder | Health and Human Services |

# Promoting the rehabilitation and reintegration of offenders with disability

Community Corrections is responsible for supervising offenders in the community and has a critical role to play in working with offenders to address their offending behaviour and assist in reintegrating them into the community.

Interventions that focus on rehabilitation and addressing the underlying causes of offending behaviour are effective in a number of ways and are critical to addressing the needs of people with disability in the justice system.

|  | Actions | Lead Agencies |
| --- | --- | --- |
| 24 | Improve the capacity to identify disability through use of a screening tool and provide enhanced rehabilitation and reintegration options for offenders on community corrections orders through the case management model | Community Corrections |
| 25 | Train Community Corrections staff to recognise and better respond to offenders with disability | Community Corrections |
| 26 | Include a focus on disability in the case management model being developed and implemented | Community Corrections |

# Providing disability ready and responsiveprison services

The development of a more comprehensive approach to the screening and identification of prisoners with disability, including information about their type of disability, is the first step in developing a system that will better address issues associated with their condition and how they may be managed during their period of incarceration.

It is critical that correctional and associated services deliver the sorts of interventions to people with disability in prison that will reduce the risk of re-offending and encourage effective reintegration into the community on release.

|  | Actions | Lead Agencies |
| --- | --- | --- |
| 27 | Improve screening and assessment of prisoners to identify the presence of disability | Tasmania Prison ServiceCorrectional Primary Health Service |
| 28 | Make reasonable adjustments to enable prisoners with disability to engage with prison services | Tasmania Prison ServiceHealth and Human Services |
| 29 | Develop specialist services and interventions to address the needs of prisoners with disability | Tasmania Prison Service |
| 30 | Develop effective partnerships between corrections, health, disability and mental health services to address the particular needs of prisoners with disability | Tasmania Prison ServiceHealth and Human ServicesTasmania Health Service |
| 31 | Introduce screening for intellectual disability and acquired brain injury and address the specific needs of prisoners | Tasmania Prison Service |
| 32 | Ensure that reintegration and release planning take account of particular needs arising from a prisoner’s disability | Tasmania Prison ServiceHealth and Human ServicesCommunity Corrections |
| 33 | Address the needs of people with disability on remand | Tasmania Prison Service |
| 34 | Establish streamlined service delivery arrangements for prisoners who were in receipt of a National Disability Insurance Scheme package prior to incarceration or who are eligible for a National Disability Insurance Scheme package on release | Tasmania Prison Service |

# Safeguarding the rights of forensic mentalhealth patients

Under current laws and practices in Australia, people with cognitive and/or psychiatric impairment who are charged with a crime, but found not guilty or ‘unfit to stand trial’ because of impairment, may be detained for indefinite and prolonged periods.

In practical terms, this has meant detention for longer than if they had been convicted.

The Australian Law Reform Commission and others have recommended reform of the current legal test for unfitness to stand trial to avoid unfairness and to maintain the integrity of criminal trials.

Work is also being done by all state, territory and federal Attorneys General as part of the Law, Crime and Community Safety Council on the treatment of people unfit to plead or found not guilty by reason of mental impairment. It is proposed to develop a national statement of principles in relation to this issue.

|  | Actions | Lead Agencies |
| --- | --- | --- |
| 35 | Ensure patients subject to forensic orders have access to advocacy support and legal assistance services | Mental Health Tribunal |
| 36 | Review the operation of the fitness to stand trial provisions in the *Criminal Justice (Mental Impairment) 1999* Act | Tasmanian Law Reform Institute |

# Continuously monitor and improve performance

The Disability Justice Plan outlines a range of measures aimed at promoting equality before the law for people with disability in Tasmania.

They are a complex set of actions that will take time and coordination to achieve.

Delivering on these outcomes will represent significant advancement toward meeting the actions set by the Tasmanian Government under its *Disability Framework for Action* and will bring the State into line with commitments under the *National Disability Strategy* and the United Nations *Convention on the Rights of Persons with Disabilities*.

|  | Action | Lead Agencies |
| --- | --- | --- |
| 37 | Co-ordinate and monitor the implementation of measures outlined in the Disability Justice Plan | JusticePremier and Cabinet (Premier’s Disability Advisory Council)  |

1. *Convention on the Rights of Persons with Disabilities*, opened for signature, 2515 UNTS 3 (entered into force 3 May 2008); [2008] ATS 12, (entered into force for Australia 16 August 2008). [↑](#footnote-ref-1)
2. Ibid Articles 5(1), 13, 14 & 16 [↑](#footnote-ref-2)
3. Council of Australian Governments, *National Disability Strategy 2010–2020* (2011)39. [↑](#footnote-ref-3)
4. Department of Premier and Cabinet (Tas), *Disability Framework for Action 2013–2017* (2012). [↑](#footnote-ref-4)
5. Australian Human Rights Commission, *Equal Before the Law: Towards Disability Justice Strategies* (February 2014). [↑](#footnote-ref-5)
6. Senate Community Affairs References Committee, Parliament of Australia, *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability* (November 2015). [↑](#footnote-ref-6)
7. See, Victorian Equal Opportunity and Human Rights Commission, *Beyond Doubt: The Experiences of People with Disabilities Reporting Crime* (2014); and Delanie Woodlock, Lucy Healey, Keran Howe, Magdalena McGuire, Vig Geddes and Sharon Granek, *Voices against Violence Paper One: Summary Report and Recommendations* (Women with Disabilities Victoria, 2014). [↑](#footnote-ref-7)
8. Commonwealth of Australia, *Third Action Plan 2016–2019 of the National Plan to Reduce Violence against Women and their Children 2010–2022* (Department of Social Services (Cth), 2016). [↑](#footnote-ref-8)
9. Tasmanian Law Reform Institute, *Facilitating Equal Access to Justice: An Intermediary/Communication Assistant Scheme for Tasmania?* Issues Paper No  22 (2016). [↑](#footnote-ref-9)