

# RECOGNITION RESPECT AND SUPPORT



Enabling justice for people with  
an Acquired Brain Injury



CENTRE FOR INNOVATIVE JUSTICE  
JESUIT SOCIAL SERVICES

33% of women  
and 42% of men  
in Victorian prisons  
have been found  
to have an  
Acquired Brain  
Injury (ABI),  
compared  
with 2% in the  
general Australian  
community.

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“I’ve thought  
about what I want to  
say and then I don’t  
even say it because  
I forget about it before  
it even comes out  
of my mouth...”

## SECTION 01

# ENABLING JUSTICE PROJECT REPORT: EXECUTIVE SUMMARY

### FAR TOO MANY VICTORIANS WITH AN ACQUIRED BRAIN INJURY (ABI) UNNECESSARILY ENTER—AND ARE CAUGHT UP IN—THE CRIMINAL JUSTICE SYSTEM.

In 2011, Corrections Victoria reported that 42 per cent of men and 33 per cent of women, in a sample of the Victorian prison population, had been diagnosed with ABI; this compares with just two per cent across the general population<sup>1</sup>.

The extraordinary overrepresentation of people with ABI in Victorian prisons reflects a broader failure of the criminal justice system to recognise and respond to the needs of people with ABI.

In fact, ABI is not well-recognised within the justice system, and the basic supports accepted as essential for people with other kinds of disability in other contexts are lacking—leaving people with ABI to fend for themselves in a system that most people without ABI would find overwhelming.

In failing to meet the needs of people who have ABI, the criminal justice system is also failing the community who expect, among other things, that the criminal justice system will contribute to community safety by changing the trajectories of people who come into contact with it.

RMIT University's Centre for Innovative Justice and Jesuit Social Services developed the Enabling Justice project to address these challenges, recognising that doing so in a meaningful way would require the involvement of people with ABI and lived experience of the criminal justice system.

<sup>1</sup> Martin Jackson, Glen Hardy, Peter Persson and Shasta Holland, 'Acquired Brain Injury in the Victorian Prison System' Corrections Victoria Research Paper Series Paper No. 04 April 2011, 6; [http://assets.justice.vic.gov.au/corrections/resources/36d7e731-e819-4ed3-972d-269b829b952d/acquired\\_brain\\_injury\\_in\\_the\\_victorian\\_prison\\_system.pdf](http://assets.justice.vic.gov.au/corrections/resources/36d7e731-e819-4ed3-972d-269b829b952d/acquired_brain_injury_in_the_victorian_prison_system.pdf)

<sup>2</sup> Australian Institute of Health and Welfare, 'Disability in Australia: Acquired Brain Injury', Bulletin 55:(2007), 2.

<sup>3</sup> Australian Institute of Health and Welfare, 'Disability in Australia: Acquired Brain Injury', Bulletin 55:(2007), 3.

### ACQUIRED BRAIN INJURY AND THE CRIMINAL JUSTICE SYSTEM

The term 'ABI' refers to a 'disability arising from any damage to the brain acquired after birth, regardless of cause.'<sup>2</sup> Causes may include traumatic head injuries (such as through assault, traffic accidents, family violence, etc.), stroke, brain infection, brain tumor and prolonged alcohol or drug use.

People affected by ABI can experience physical problems such as 'headaches, fatigue, seizures, poor balance, visual and hearing disturbances, chronic pain and paralysis.' Most significantly, they may also suffer 'cognitive problems, including poor memory and concentration, reduced ability to plan and problem solve and inflexible thinking, and psychosocial/emotional problems, such as depression, emotional instability, irritability, and impulsive or inappropriate behavior'.<sup>3</sup> People with ABI form a particularly vulnerable group in our community, often caught up in a complex interplay of social disadvantage and disability. Commonly, people with ABI experience multiple and complex needs, such as alcohol or drug addiction, mental illness, homelessness and family violence.

The symptoms of ABI can severely impact on a person's experience of the justice system. Having ABI can compound an already intimidating experience of the legal system, limit the ability to comply with sentencing orders and even exacerbate offending behavior. The justice system can be daunting and difficult to navigate for those without a disability; however, for those with ABI who may struggle to engage in everyday tasks,

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this can be near impossible: “[I]f you’ve got an ABI it’s very difficult, to have the patience to sit down, go to appointment after appointment after appointment, not missing, stay patient, not spit the dummy...”<sup>4</sup>

### GIVING A VOICE TO PEOPLE WITH ABI IN THE JUSTICE SYSTEM

The Enabling Justice project interviewed 21 people affected by ABI who had been in contact with the justice system, in order to better understand how they experienced the system and to identify ‘missed opportunities’, where alternative responses may have led to more positive outcomes. Nine of those interviewed (seven men and two women, all of whom had spent time in Victorian prisons) agreed to join the ‘Justice User Group’, a working body that met regularly to formulate, discuss and workshop responses built on combined expertise and grounded in experience.

The stories of project participants presented throughout this report highlight the particular challenges faced by people with ABI in the criminal justice system. For Enabling Justice project participants, feeling ignored, fearful, disrespected, confused and unsupported were remarkably common experiences. Participants described feeling:

- **UNRECOGNISED:** That the criminal justice system was not set up to identify or accommodate their needs. As a result, particularly when they were in prison or serving sentences in the community, their ABI-related symptoms were sometimes misconstrued as ‘trouble-making’ or evidence of drug usage. Their disability was often not recognised nor consistently dealt with across various justice processes.

<sup>4</sup> Participant interview, dated 22 April 2015.

<sup>5</sup> Participant interview, dated 2 June 2015.

<sup>6</sup> Participant interview, dated 27 April 2016.

<sup>7</sup> Participant interview, dated 22 April 2015.

- **CONFUSED:** The symptoms of ABI, together with the use of complicated legal jargon and inconsistent processes made the justice system particularly confusing. *“The things I hear are very dismissive, in the court. It’s real heavy. Real heavy on your brain. And you try to listen, by the time you understand what’s been said, something else has been put in front of you...”*<sup>5</sup>
- **UNSUPPORTED:** For some participants, having ABI limited their ability to comply with community corrections orders, as these presumed a functioning memory and comprehension of relatively complex requirements. Yet the level of support they needed to understand and comply with orders was simply not available. *“[T]hey’re supposed to be your case worker, and you think that your case worker would help you if you had problems, but they won’t. Their job is to make sure you do your commitments, their job is not to help you, so that makes it real hard.”*<sup>6</sup>
- They could not openly report their disability for fear of it being exploited by police, corrections officials or other offenders: *“To be seen to be seeking help for anything, you’re putting yourself in a position to be a target...”*<sup>7</sup>
- When their disability was self-reported, it was often not taken into account nor deemed to warrant special consideration or assistance.

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- **DISRESPECTED:** Experiences of being treated disrespectfully by police, magistrates, custodial and community corrections officers caused participants to lose respect for the law and to disengage. *"They don't treat you with respect. You try to talk to them with respect but they don't...they're just like... '[I]ook at her... she's a bit of shit. She's a junkie.' They call you junkie slut. So why would I have faith in the police?"*<sup>8</sup>
- **FEARFUL, ANXIOUS AND AFRAID:** For many, their ABI exacerbated experiences of anxiety and vulnerability in the face of a complex justice system they could not comprehend and which did not make support available to assist them through it. *"There's a lot of anxiety, you don't know what's going on..."*<sup>9</sup>

The experiences of project participants indicate a lack of awareness, across the justice system, of the specific needs and circumstances of people with ABI. They also demonstrated that people with ABI have largely not been afforded the level of support provided to people with other disabilities in other contexts. By contrast, where the needs of people with ABI were accommodated and people were treated with respect, their experience of the system was positive and led to better outcomes.

<sup>8</sup> Participant interview, dated 28 May 2015.

<sup>9</sup> Interview with 'Andy', Enabling Justice Project report, 36.

<sup>10</sup> Justice User Group meeting, April 2016.

## A MORE EFFECTIVE APPROACH

When the failures of the criminal justice system are so clearly highlighted by the experiences of project participants, identifying what people with ABI might need to participate fully and equally in the justice system is quite simple.

A series of recommendations have been designed to reduce the involvement of people with ABI in the justice system and to support more positive outcomes. These recommendations were formulated, 'road-tested' and workshopped with the Justice User Group to ensure they were fit for purpose. The recommendations are examples of how the system might respond to the three key justice needs of people with ABI that were identified during this project: recognition, respect and support.

## RECOGNITION

### ENABLING PEOPLE TO PARTICIPATE IN THE JUSTICE PROCESSES THAT AFFECT THEM

ABI needs to be recognised as a disability within the criminal justice system, because participants felt that *"...not many people know, it does need more flyers, a few things put out there so people do know... Any other type of injury a person can get, ABI needs a bit more recognition too."*<sup>10</sup>

For ABI to be recognised, the system must acknowledge ABI as a disability even though it often occurs alongside other forms of disability and disadvantage. The system must also recognise that a person with ABI may have additional communication and support needs. People working within the system must have an awareness of the causes, symptoms and

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common support needs of people with ABI. The system must make those supports known and available to people who have or are suspected of having ABI. Where their ABI is recognised, people can feel more confident to disclose their ABI and access services suited to their needs.

## RESPECT

### ENABLING PEOPLE TO PARTICIPATE IN THE JUSTICE PROCESSES THAT AFFECT THEM

Project participants reported the significance of being treated with respect in their contact with the justice system. It is a fundamental expectation that our justice system treats all people with respect, in accordance with their basic human dignity, regardless of their status within it. Whether they are offenders or prisoners or victims or witnesses, people with ABI are entitled to respect. This includes treating people with dignity and enabling them to participate meaningfully in processes that affect them. In the criminal justice system, this can take many forms, including the use of plain English to ensure people with ABI can understand and meaningfully participate in their legal processes. The benefits of treating people with respect include a greater likelihood that a sentence will be complied with, that a court appearance can be a catalyst for long term behavioural change, and, for the justice system, legitimacy. Disrespectful treatment, on the other hand, is likely to limit rehabilitation for people with ABI and have negative impacts on their wellbeing.

Participants who felt respected were more likely to comply with the law and reported the positive impact of

<sup>11</sup> Participant interview, dated 7 June 2016.

<sup>12</sup> Participant evaluation interview 7, dated 8 December 2016.

the interaction on their lives...*"[S]he took a lot of time to see how you were going and what was happening in your life and why you were in jail. And I think, because I was on heroin at the time, she actually got me off heroin. She... inspired me to get off heroin....She could've just closed her book on me."*<sup>11</sup> Many of the elements of respectful treatment can be met within existing system resources; they just require the will of people working within the criminal justice system to adopt a respectful approach.

## SUPPORT

### SUPPORT TO ACCESS TO JUSTICE WITHIN AND OUTSIDE THE CRIMINAL JUSTICE SYSTEM

Many participants felt they were *"set up to fail"* due to the lack of disability-specific services available, both within the justice system and in the broader community. A range of measures is recommended to improve support for people with ABI, as adapted to the particular needs of each person – from providing an Independent Third Person at police interviews to offering intensive case management. Such support services should provide the same adjustments that are routinely made for people with other recognised disabilities. A number of simple supportive measures have the potential to make significant differences: *"...a lot of people are just a bit confused, if they're put in the right direction, they'll change, they will."*<sup>12</sup>

Insecure housing was identified by many project participants as a significant factor in their cycles of offending and re-offending. Supporting people with ABI to access secure housing would make a substantial

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difference in promoting their stability, facilitating long-term support and ultimately reducing recidivism.

Thirty-five recommendations were developed by the project partners, participants and members of the Justice User Group, addressed to the criminal justice system as a whole, as well as specific parts of the system. These recommendations reflect the participants' need for a system that delivers recognition, respect and support to people with ABI. These recommendations call for a criminal justice system that listens to the voices of people with ABI; that focuses on responding more to their support needs, not only to their perceived risk; that provides holistic support; that links justice and health services more effectively; and that provides people with ABI with access to stable and affordable housing, linked to support.

### **CONCLUSION**

Reducing reoffending is a crucial part of improving community safety, yet over the past five years Victoria's recidivism rate has increased and is now higher than the national average. In 2017, Victoria had more people incarcerated in its prisons than at any time in its history. With 42 per cent of Victorian prisoners returning to a sentenced term of imprisonment within two years of release and a further nine per cent returning to the justice system with a sentence to be served in the community, our criminal justice system seems to be failing spectacularly at achieving what should be its most important goal.

Principal among those who are affected by this failure are people with ABI, who are disproportionately represented in Victorian prisons and in the criminal

justice system more broadly. When such a large proportion of those in contact with the criminal justice system have ABI, understanding how they experience the system, and identifying and responding to their needs within it, is critical to developing effective responses to reducing recidivism.

Recognising the importance of listening to people who have experience of the criminal justice system, and understanding what it is like to experience the system from their perspective, lie at the heart of this project. As this report demonstrates, meeting the justice needs of people with ABI will require the criminal justice system to recognise, respect and support people with ABI. Unless the system responds to their needs it will continue to fail people with ABI, and these failures will be reflected in disproportionate levels of incarceration and rising human and financial costs.

As this report also suggests, some fundamental changes to the way the system develops responses to the challenges it faces will also need to occur. Lasting solutions are unlikely if they do not involve meaningful participation by prisoners and offenders. Through the experiences and insights of the project participants and members of the Justice User Group, the Enabling Justice project has attempted to bring those closest to the problem a little closer to the resources needed to create change. It is hoped that the conclusion of this project is not the end, but rather the beginning of a new, more effective approach to justice.

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# ENABLING JUSTICE PROJECT REPORT: RECOMMENDATIONS

### RECOMMENDATION 1

That the Victorian and Commonwealth Governments both contribute to funding a campaign to raise awareness about ABI; its causes; known risk factors, symptoms and how to seek help.

### RECOMMENDATION 2

That the Victorian Government continue with its commitment (in response to the recommendations of the Royal Commission into Family Violence) to undertake research into the prevalence of ABI among victims and perpetrators of family violence, requiring the research to be user-centred and to include the identification of the particular support needs of victims and perpetrators of family violence who have an ABI.

### RECOMMENDATION 3

Staff in Family Violence Safety Hubs should receive training about ABI and its links with family violence, including training to conduct routine ABI screening, and information about confirmed or suspected ABI should be recorded on family violence risk assessment tools and the family violence information sharing platform.

### RECOMMENDATION 4

All people who work within the criminal justice system must be educated about the circumstances and needs of people with ABI and able to recognise people with ABI and respond appropriately. Additionally, in recognition of the large number of people with support needs in contact with the criminal justice system, people who work within the criminal justice system must adopt a precautionary approach towards all people in contact with the system.

### RECOMMENDATION 5

That the Victorian Government introduce an information sharing regime for the criminal justice system, that has the capacity to record a person's needs, diagnoses, and their support professionals where the sharing of that

information is for the purpose of benefiting that person and that person provides their fully informed consent. Such a regime should enable sharing of health information between agencies, including non-government community support organisations who support offenders, so that information follows an individual through their entire experience with the criminal justice system.

### RECOMMENDATION 6

That the Victorian Government establish a working group comprising representatives of criminal justice system organisations and justice users with a range of disabilities to identify the information sharing protocols for the information sharing regime.

### RECOMMENDATION 7

That a common screening tool be designed which workers across the criminal justice system can be trained to use for the purpose of identifying a person with a suspected ABI until a neuropsychological assessment is available, so that a person's needs are recognised and access to appropriate support and programs are offered at the earliest opportunity.

### RECOMMENDATION 8

That all programs, services and organisations that form part of the criminal justice system, should be designed with a human-centred approach, to enhance access to justice and procedural justice for all who have contact with it.

### RECOMMENDATION 9

That the Department of Justice and Regulation fund a criminal justice advocacy and support service which offers support to persons with a cognitive disability or complex needs at any point of their interaction with the criminal justice system, including police, courts, corrections and prison.

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### RECOMMENDATION 10

That Victoria Police's work to implement recommendation 5 of the 'Beyond Doubt' report to improve communication and translation of documents into Easy English be extended to benefit defendants and suspects, not just witnesses and victims of crime.

### RECOMMENDATION 11

That in implementing Recommendations 42 and 49 of the Royal Commission into Family Violence, and improving family violence education at all levels of the organization, Victoria Police also seek to provide all of its members with regular and ongoing training about the links between family violence and ABI, in particular for women who come into contact with the criminal justice system as both victims and offenders and the need for sensitive and appropriate responses.

### RECOMMENDATION 12

That Victoria Police require members to notify all people who it seeks to interview about the availability of the Independent Third Person. One way of doing this might be the provision of an Easy English flyer, to be provided to suspects and witnesses, as well as to guide verbal communication regarding the ITP.

### RECOMMENDATION 13

That a review be conducted into the structure and resourcing needs of the Independent Third Person program, currently delivered by the Office of the Public Advocate, enabling the program to be strengthened and funded to meet growing demand, and so that people can confidently request the presence of an ITP without fear of significantly lengthening their time spent in police custody.

### RECOMMENDATION 14

That Victoria Legal Aid continue with its efforts to review and redesign the delivery of its criminal law services (starting with its duty lawyer services) using a human-centred approach, that engages people with a broad range of needs, including people with ABI. Any such design should consider:

- the extent to which further skills training is required for VLA lawyers, but also how services can be structured to ensure clients have adequate time to speak with a lawyer, in an appropriate manner and environment, about their case and their personal circumstances; and
- how other professionals such as social workers might be included in the model of service provision to help support and better communicate with clients who experience complex needs.

### RECOMMENDATION 15

That the Victorian Government enhance the funding it provides to VLA, so that it can reduce the demands on lawyers (especially duty lawyers), enabling them to spend sufficient time with clients, to identify relevant personal circumstances, including ABI.

### RECOMMENDATION 16

That solution-focused courts, in particular the ARC model, be expanded to all courts in Victoria. Until this is possible, at every court, introduce the two key elements of solution-focused courts: judicial monitoring (via the use of part heard lists, informal seating arrangements) and CISP support, and that government seek to appoint judicial officers and Magistrates who demonstrate a commitment to therapeutic justice.

### RECOMMENDATION 17

That the Department of Justice and Regulation make training available to all staff (including judges and Magistrates) employed at Magistrates and County Courts around procedural justice and how to implement procedural justice into court practices.

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### RECOMMENDATION 18

That section 80 of the Sentencing Act 1991 (Vic) be amended to make Justice Plans, and the necessary support from Department of Health and Human Services, available as a sentencing option to people with an ABI, in addition to people with an intellectual disability.

### RECOMMENDATION 19

That Corrections Victoria introduce mandatory trauma-informed practice training for all custodial officers and community corrections officers as well as training around recognising and responding to people with ABI.

### RECOMMENDATION 20

That Corrections Victoria promote a strong culture of commitment to rehabilitation within its workforce by reviewing entry and training requirements for all staff.

### RECOMMENDATION 21

That Corrections Victoria introduce a non-custodial case management team to work with prisoners (or at least to work with prisoners who are identified as having an ABI, mental illness or complex needs) to support them in the prison environment and reduce their likelihood of re-offending.

### RECOMMENDATION 22

That Corrections Victoria intensify the support available to people who are undertaking Community Corrections Orders and have a confirmed or suspected ABI or complex needs. This needs-based approach may include assigning specialist case managers with lower case-loads and higher entry and training requirements to such clients, even if they are not in an offence-based high risk category.

### RECOMMENDATION 23

Current Justice Health contracts should be reviewed to ensure that prisoners have equal access to a reasonable range of health services comparable to

those available in the community, with emphasis on making available treatments and therapies other than medication that are relevant for people with cognitive disability and complex needs, such as occupational therapy and counselling.

### RECOMMENDATION 24

That the Victorian Ombudsman conduct an inquiry into the management of prisoners with mental illness and disability in Victorian prisons and youth detention facilities, including a review of whether there is currently an inappropriate use of psychiatric medication and other measures such as seclusion.

### RECOMMENDATION 25

That Corrections Victoria introduce a team of ABI Clinicians—through partnership with community based health organisations—to deliver assessment services and support to people in Victorian prisons who have, or are suspected of having an ABI.

### RECOMMENDATION 26

That all people with ABI and/or complex needs qualify for pre-and post-release planning and support, regardless of their risk rating or offending profile and that the current pre-and post-release programs be reviewed to determine their suitability for people with ABI/complex needs.

### RECOMMENDATION 27

People who are in prison should be able to apply for, access and continue to receive their NDIS support package while in prison on an equal basis with people who are not in prison, making use of all registered NDIS service providers that work with people in prison. NDIS applications and package planning should be fully integrated into post release planning and support.

### RECOMMENDATION 28

That Corrections Victoria be required to prepare detailed, publicly available reports on key performance measures.

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### RECOMMENDATION 29

That the Victorian and Commonwealth governments continue to provide, and increase the provision of, easily accessible community support services that seek to enhance social inclusion and provide connection to health and other services for individuals with ABI and complex needs who do not qualify for NDIS support. This should include funding for the establishment and facilitation of peer support and advocacy networks that promote social inclusion and participation for people with ABI and complex needs.

### RECOMMENDATION 30

That the Victorian government provide funding to both advocacy and legal services to assist people with an ABI and complex needs in contact with the criminal justice system—especially those in prison—to access the NDIS.

### RECOMMENDATION 31

Further to Recommendation 26, that Corrections Victoria and the Department of Health and Human Services make available a larger number of properties to community support organisations, accessible to people with an ABI and/or complex needs being released from prison.

### RECOMMENDATION 32

That the Victorian Government in partnership with a current community support provider establish a pilot housing support program targeted towards people in contact with the criminal justice system with an ABI or complex needs living in or reintegrating back into the community.

The program should:

- have access to specified social housing stock;
- have access to brokerage funding; and
- engage people with lived experience of the criminal justice system and ABI to assist in the design of the program and provide support.

### RECOMMENDATION 33

That the Victorian government provide long term and increased funding to homelessness and tenancy support services to provide assistance to people who have exited prison and who reside in public and social housing, to sustain their tenancies and provide support to address underlying issues that may place their tenancies at further risk.

### RECOMMENDATION 34

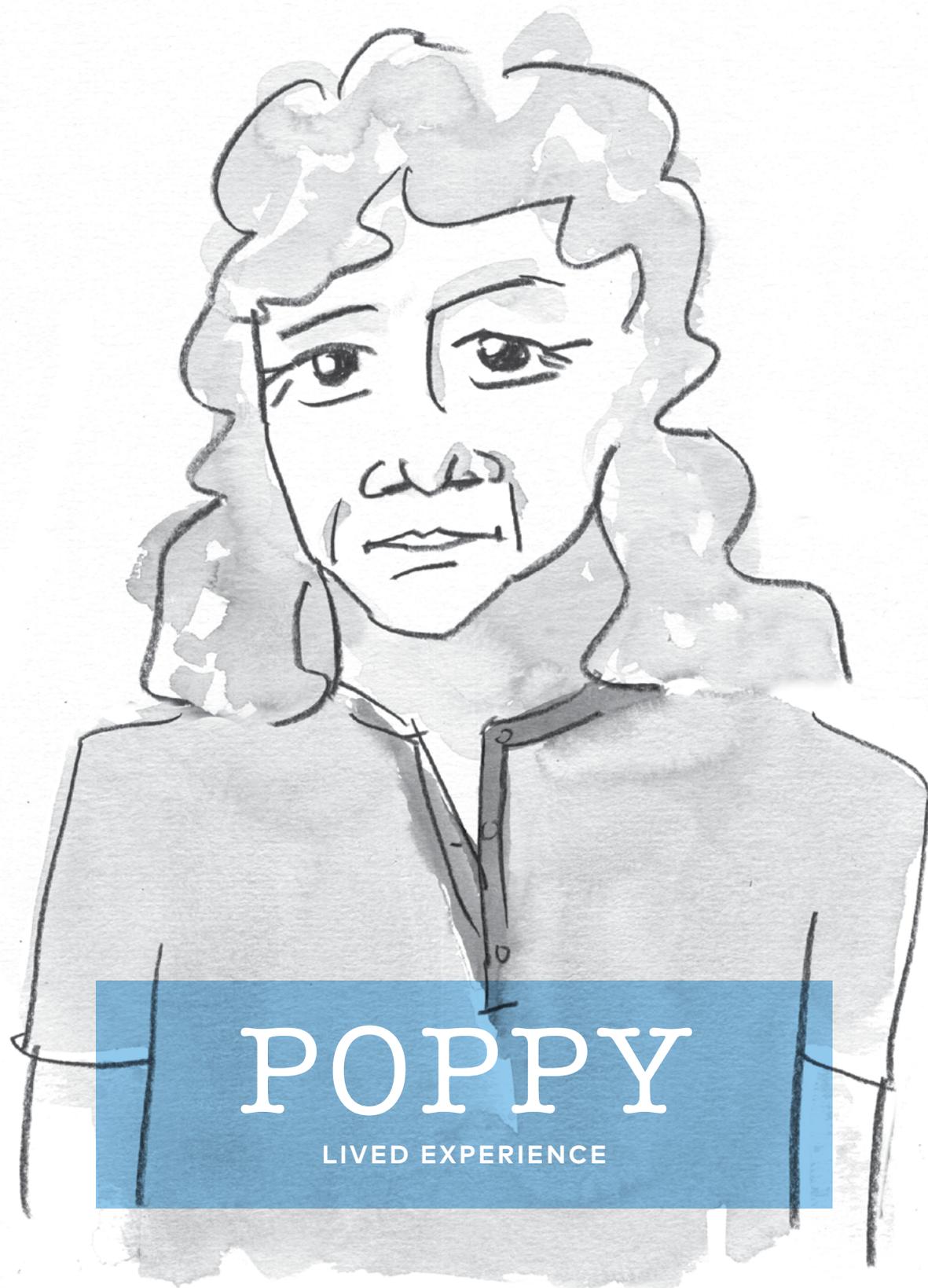
That the Victorian Government work with the Commonwealth Government to utilise all available economic levers to address the housing affordability crisis.

### RECOMMENDATION 35

That the Department of Health and Human Services extend the period of absence allowed from a public tenancy from the current maximum of 6 months to a maximum of 12 months, with the ability for discretion to be applied.

Understanding what  
it is like to experience  
the criminal justice  
system when you  
have ABI is difficult,  
unless you have  
lived experience of it.

"Poppy", "John" and "Russell" are not the real names  
of the project participants. The names of project participants  
have been changed to protect their identities.



POPPY

LIVED EXPERIENCE

### POPPY'S EXPERIENCE

Poppy has ABI as a result of violence in the family home as a child. Poppy later experienced violence at the hands of intimate partners. Police did not recognise Poppy as a victim, nor as someone with ABI. As a result, rather than getting the help she needed, Poppy was driven deeper into the criminal justice system and, ultimately, imprisoned.

### HOW THIS MADE POPPY FEEL

**Frightened:** Poppy was often alone with male police officers and was assaulted. **Disrespected:** Police laughed and jeered at her and did not offer her support. **Unsupported:** No-one recognised that Poppy might need support as a victim of family violence and as a person with ABI.

### THE OPPORTUNITY FOR CHANGE

- If Police were more aware of the links between family violence, ABI and offending, they might **recognise** when a person has ABI or support needs and make appropriate referrals earlier in the process.
- A system-wide justice-related advocacy service would provide much needed **support** to people with ABI and complex needs from first contact with the system and would be an interface between a person with complex needs and the criminal justice system.

### What change looks like

All people are offered support if they need it when being interviewed by police. A justice advocacy service is available to assist people with support needs (including ABI) through the criminal justice system. The links between family violence, ABI and trauma are well known by people across the criminal justice system and referral pathways are established.



JOHN

LIVED EXPERIENCE

### JOHN'S EXPERIENCE

John has been in and out of institutions since he was five. He began using drugs early in life, and as a result of this (and a number of overdoses) has ABI. John also experiences mental illness and homelessness. In prison, John could not get the help he needed to rehabilitate. Equally, he struggled to complete corrections orders and parole in the community because of his ABI and the lack of support available.

### HOW THIS MADE JOHN FEEL

**Unrecognised:** The impact of John's disability was misunderstood and he was made to feel undeserving of support, despite his ABI and significant support needs. **Unsupported:** John felt like custodial officers and community corrections officers were not there to help him, and they changed so often, that it was hard to keep up. **Confused:** John sometimes misunderstood or forgot what he was meant to do, and was confused when he faced penalties for non-compliance.

### THE OPPORTUNITY FOR CHANGE

If people with ABI in prison had access to genuine **support** from someone skilled and **respectful**, they would be more likely to engage with their rehabilitation and return to the community successfully. If such support could continue in the community, people with ABI would be less likely to return to prison.

### What change looks like

There are non-custodial case managers and clinicians in prison and in the community, giving consistent and continuous support to people with ABI, mental illness and complex needs during their sentences.



### RUSSELL'S EXPERIENCE

Russell grew up without his parents and started using drugs in his teens. He has ABI as a result of drug use and it is made worse by epileptic seizures. Russell lived in his public housing property for 15 years until he was arrested for drug related offences. At Court, the Magistrate sentenced Russell to 22 months' prison, knowing this would mean Russell would lose his housing. On his first night in a boarding house, upon release, Russell suffered a seizure, was hospitalized and is still recovering and looking for appropriate housing.

### HOW THIS MADE RUSSELL FEEL

**Disrespected:** the impact of imprisonment on Russell was not considered by the Magistrate. **Overlooked, dismissed, ignored:** Even though his ABI was known, people in the system didn't ask Russell about his needs or offer support.

“They might as well have thrown me on the street. I was so more settled when I had public housing – I was there for 15 years and all of a sudden I've got nothing – I lost everything that I had in that flat because I went to jail.”

### THE OPPORTUNITY FOR CHANGE

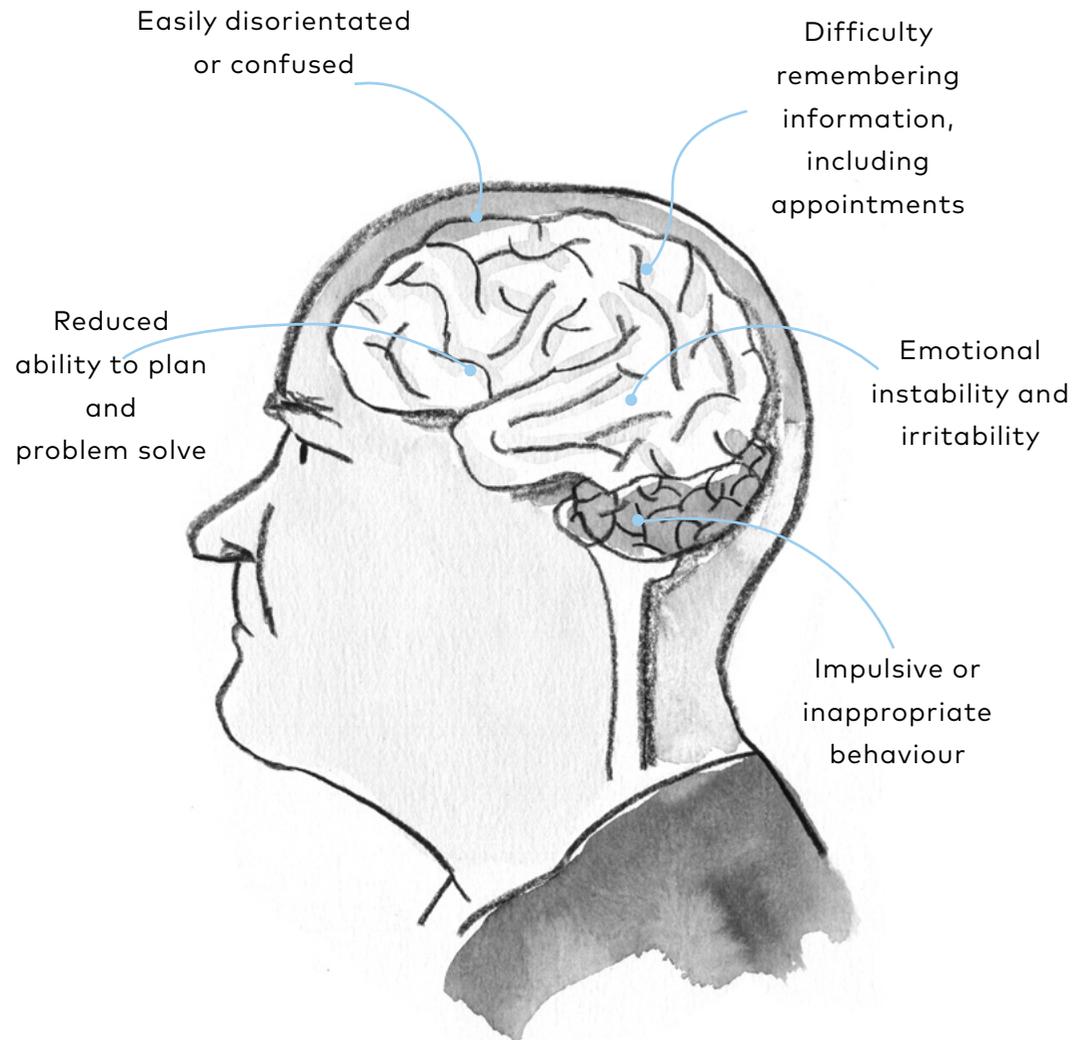
- ABI must be recognised as a disability which gives rise to a range of **support** needs that must be attended to.
- Because of their vulnerability, people with ABI need to be **supported** to retain or secure housing.
- If people feel they have been treated with **respect** – especially by Magistrates and judges – they are more likely to understand and comply with orders and less likely to reoffend.

### What change looks like

ABI is recognized as a disability, deserving of recognition and supportive measures. Magistrates treat people charged with criminal offences with respect, and properly take into consideration their circumstances when determining appropriate sentences. Additional housing options and support are available for people with ABI in contact with the criminal justice system.



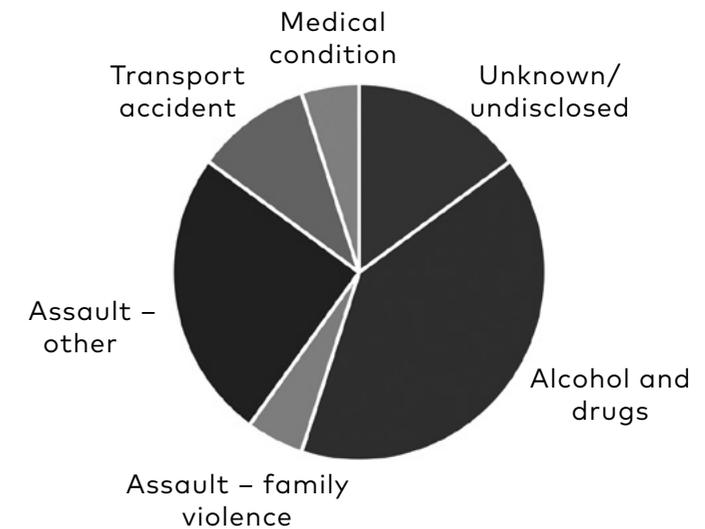
## THE SYSTEM MUST RECOGNISE THE CHALLENGES EXPERIENCED BY A PERSON WITH ABI



### NOT JUST ABI: CO-OCCURRING FACTORS

People with ABI in contact with the criminal justice system — including project participants — commonly experience a range of complex circumstances (mental illness, homelessness, family violence, drug or alcohol addiction) in addition to their ABI. We need a system that listens to the voices of people with ABI, responds to a person's (often complex) support needs, has better joined-up approaches between justice and health services and is more respectful.

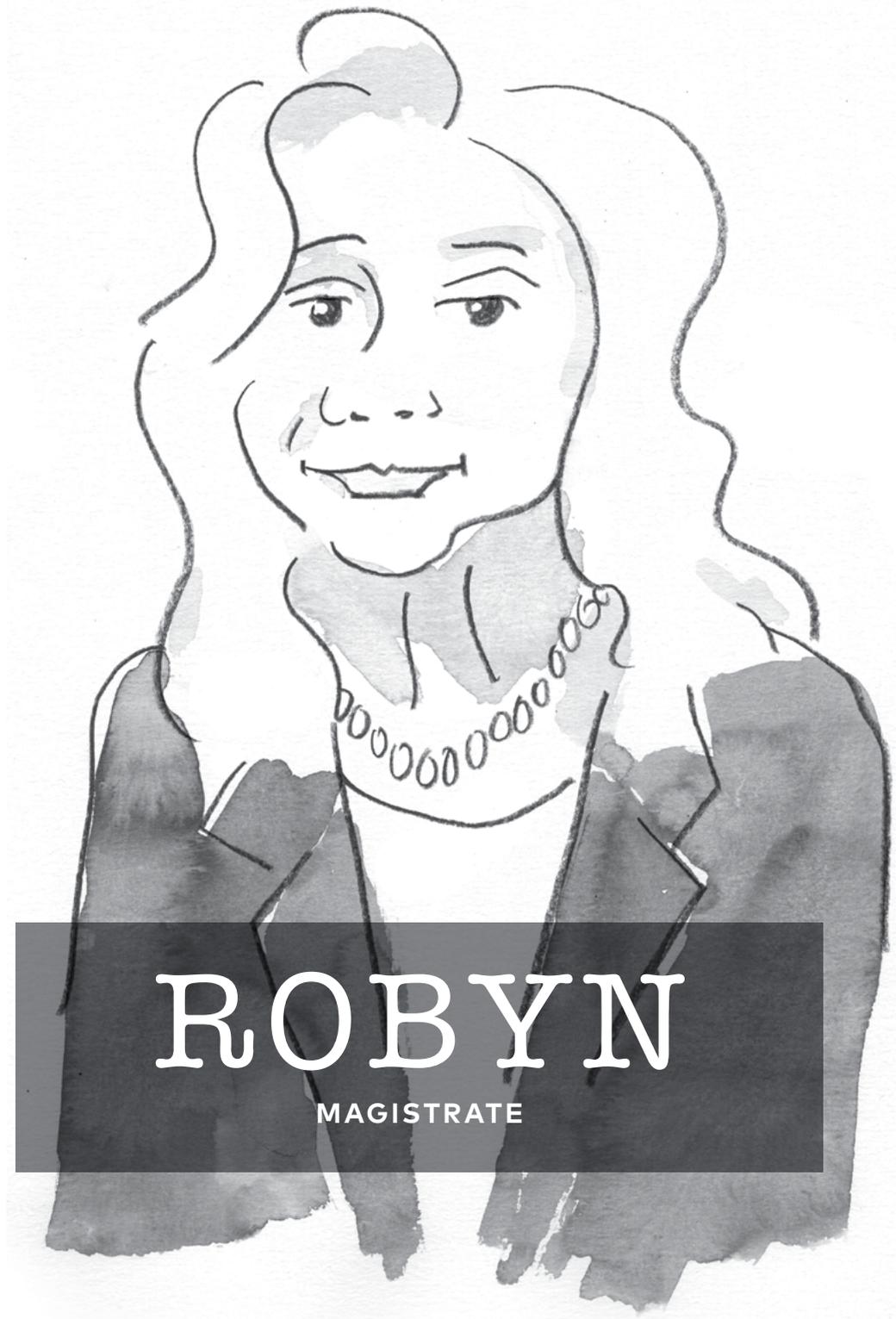
## CAUSES OF ABI AMONG PROJECT PARTICIPANTS



“You’re set up to fail, really. I can understand how a lot of people don’t make it. They fail it. They end up breaking their ICO or whatever it is and back inside they go. You’ve got to have more support services for them when they get out of jail... and housing is a big problem.”

We need to understand  
the perspectives and  
experiences of people with  
ABI and a lived experience of  
the criminal justice system,  
and involve them in making  
it work better for everyone.

“I like to think  
what I’ve been  
through is now going  
to be a stepping stone  
to making things  
different.”



ROBYN

MAGISTRATE

### **THE CURRENT APPROACH**

Going to court can be a disconcerting experience. Courts today still operate according to a 'privileged knowledge system', using language and procedure that disorients and intimidates. For people with ABI, this experience is more than disconcerting.

### **THE JUSTICE USER EXPERIENCE**

When people misunderstand what is happening in court, or feel like they haven't been treated with respect, justice is not served. The critical opportunity for a court to be a catalyst for positive change is lost if the person being sentenced is not meaningfully engaged.

"I just wanted to get it over and done with. Every time. I never really listened to them that much, I think because they were talking words I wasn't understanding or listening to them or relating.

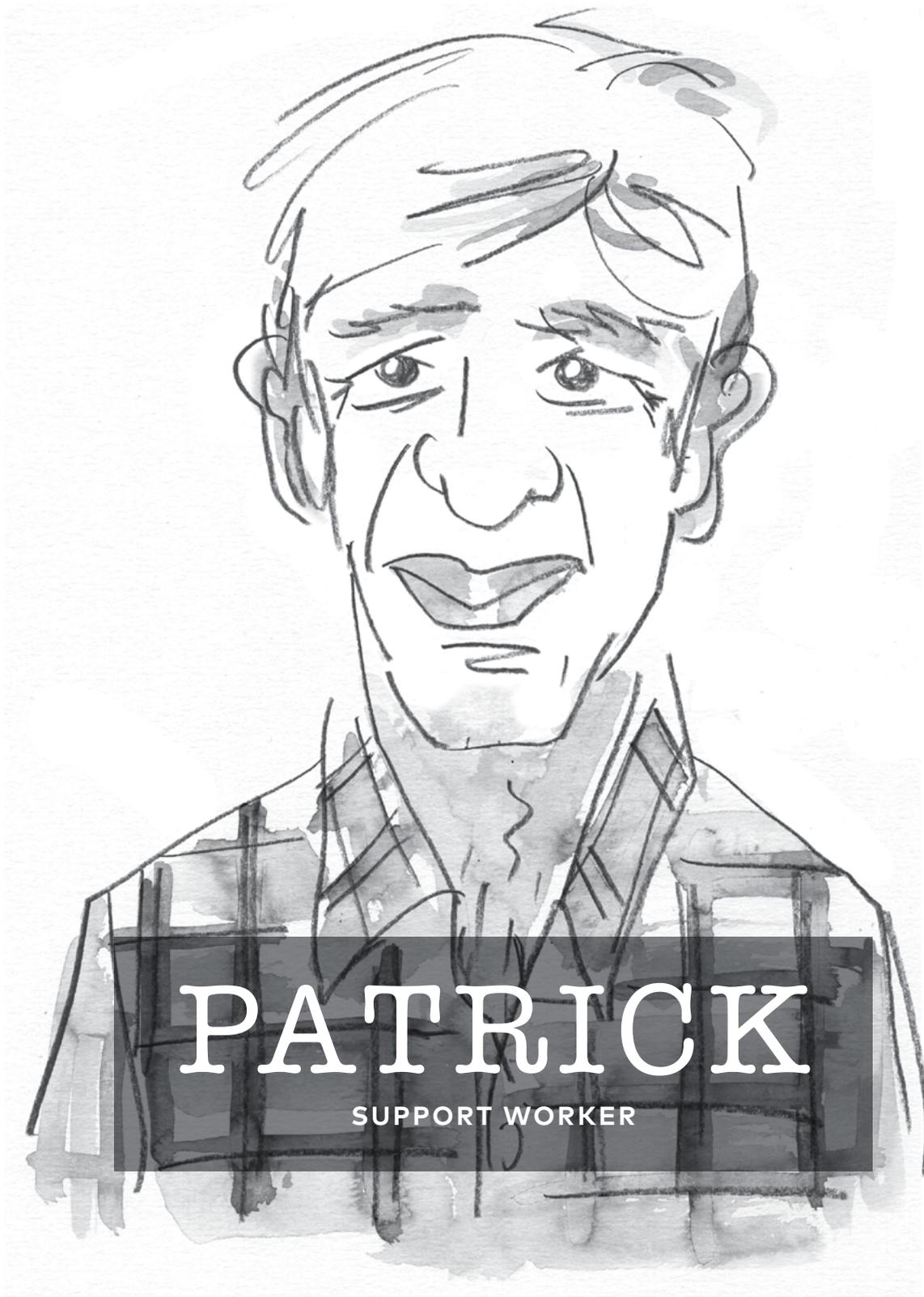
A lot of the time it used to be words that went past me, that's why I think I didn't really listen to them because they weren't talking to me and knowing that I was understanding?"

### **THE OPPORTUNITY FOR CHANGE**

By contrast, those who had experienced solution-focused courts described feeling engaged in the process, largely due to the respectful way the Magistrate conducted the hearing and interacted with them. In the words of one participant: "You have to respect people. It's not hard."

### **What change looks like**

- Courts use simple, clear language.
- People feel like they are treated with respect from the moment they enter court to the moment they leave.
- Solution-focused courts are widely available and are a positive intervention in a person's life.



### **THE CURRENT APPROACH**

Social connection and support are critical components in reducing reoffending. Yet many people with ABI do not qualify for any significant pre or post-release support, and are not meaningfully supported by health and disability services in the community.

### **THE JUSTICE USER EXPERIENCE**

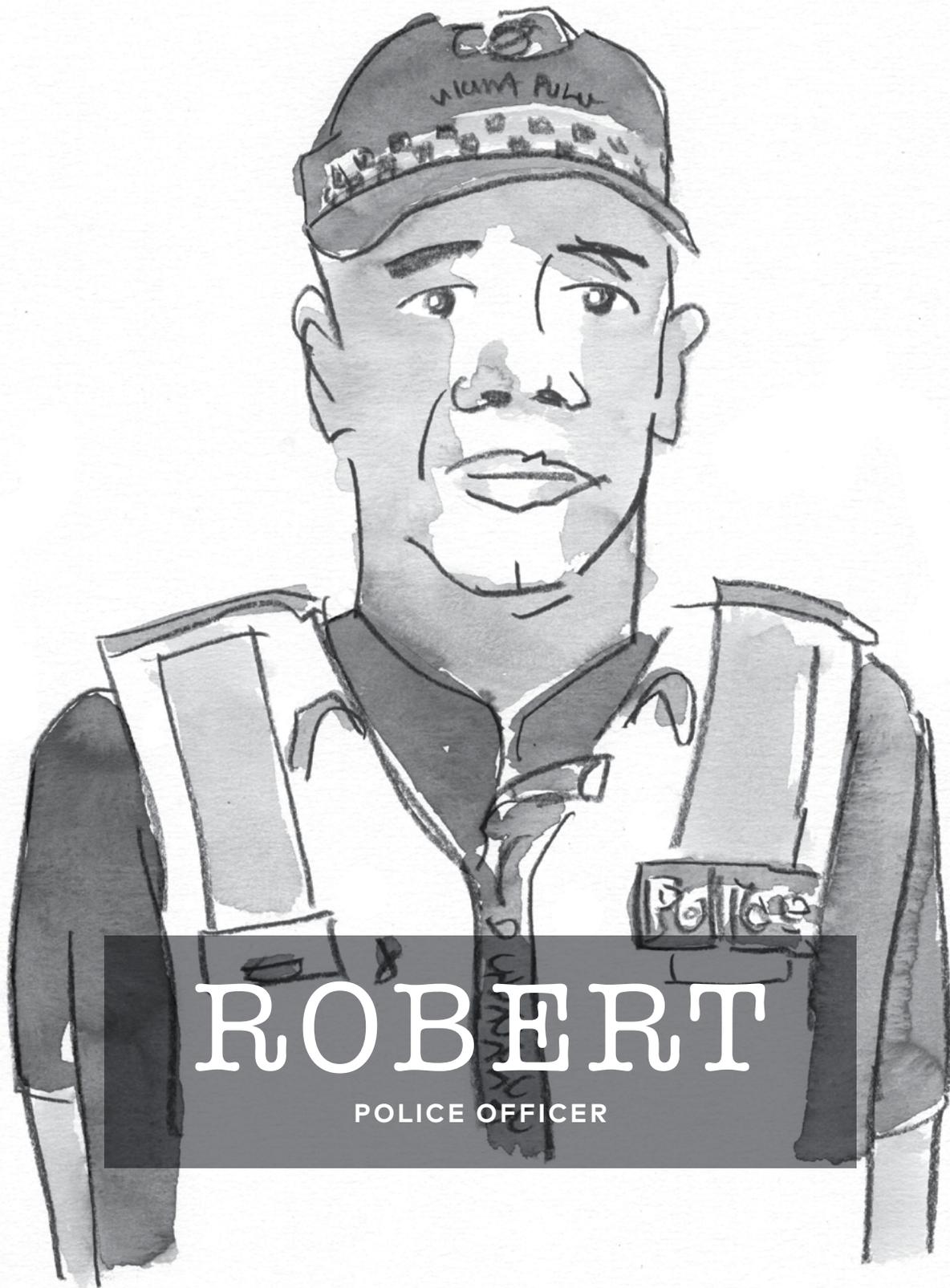
There is a lack of services in the broader community for people with ABI and a lack of education about the needs and circumstances of people with ABI. People with ABI have largely not been afforded the support they deserve and which people with other disabilities receive. People with ABI commonly access a range of disparate services, yet are without consistent, meaningful support.

### **THE OPPORTUNITY FOR CHANGE**

Community support services have the opportunity to prevent people with ABI from having further contact with the criminal justice system. Services must be user-centred, offering consistent and non-judgmental support. Importantly, community services have a role assisting people with ABI to navigate the criminal justice system.

#### **What change looks like**

- People are assessed for pre and post release support according to their needs, not solely.
- People working in the community sector afford people with ABI the support and understanding they deserve.
- People with ABI receive support while in custody and when living in the community via the NDIS.



ROBERT

POLICE OFFICER

### THE CURRENT APPROACH

As the interface between the criminal justice system and the community, police play an integral role in how the system is viewed by people with ABI. How people feel about their interactions with police can affect their experience of the rest of the system. It can also influence whether a person's support needs are identified or disclosed early on. While some support measures exist, there is not a culture of offering support among police, nor a strong awareness of those measures among people with ABI.

### THE JUSTICE USER EXPERIENCE

Fear and mistrust of the police were common among project participants, influenced by experiences of aggression, violence and disrespectful treatment. People were reluctant to disclose their ABI where they felt it would make them vulnerable and would not lead to an offer of support by police. Without support, many people with ABI felt confused in police interviews and made decisions which would shorten the interaction but had long term consequences, adverse to their interests.

### THE OPPORTUNITY FOR CHANGE

While police cannot be expected to be experts in disability, they must be trained to recognise when someone might need support and facilitate this to occur. Treating all people – including criminal suspects – with respect will make people with ABI more comfortable to disclose their ABI and request support.

#### What change looks like

- A culture exists within Victoria Police of offering support to all people who identify that need, including access to the Independent Third Person.
- A support service is available that police can reliably call upon for people who identify or are identified as having support needs.
- An advocacy service assists people during their contact with the criminal justice system, from their first point of contact with police onwards.



### **THE CURRENT APPROACH**

Despite their overrepresentation in the criminal justice system, people with ABI are unrecognised and unsupported and therefore confused, frightened and disrespected in a system that is supposed to assist them to change their lives. Yet policy makers don't ask people with ABI who are in contact with the criminal justice system about their experiences and their needs.

### **THE JUSTICE USER EXPERIENCE**

Often the only people with a complete view of the system and with insight into how effective the system is for them are the people in contact with it, and the people to whom interventions are targeted. Yet the views of people charged with criminal offences are not sought, making them feel irrelevant to the process and entrenching ineffective responses.

### **THE OPPORTUNITY FOR CHANGE**

When such a large proportion of people who have contact with the criminal justice system have lived experience of disability, substance use, disadvantage, poor educational attainment and trauma, the criminal justice system must be designed to be responsive to their needs. Asking the people who are most affected about what they need will improve the system.

### **What change looks like**

People with lived experience of the criminal justice system and disabilities such as ABI are consulted by policy makers about what their needs are and how these could be met.



DAVID

CORRECTIONS OFFICER

### **THE CURRENT APPROACH**

Custodial officers work with a complex, high needs group of people. Case management ratios combined with the rate of staff turnover means that corrections staff struggle to develop relationships with the prisoners assigned to them. Despite a comprehensive Offender Management Framework that identifies the need for case managers to be trained and skilled to effect behaviour change, the level of support and services made available is dependent on the prisoner's level of risk (as opposed to their need).

### **THE JUSTICE USER EXPERIENCE**

Many participants felt that custodial officers, even those who were assigned as their case managers, did not see it as their role to support them, but instead only to maintain prison order.

“When I was in there, I felt as though I wasn't heard. Every time I spoke, I felt like I wasn't being listened to.”

Similarly, those who had been on community corrections orders felt that staff saw it as their role to monitor breaches and non-compliance rather than provide active support.

### **THE OPPORTUNITY FOR CHANGE**

An informed, skilled workforce was seen as the key to a corrections system that would recognise, respect and support people with ABI. The Justice User Group, as well as most stakeholders consulted, felt very strongly that Justice Plans should be available to people with ABI and were confident that they would receive more appropriate support from Disability Services than Community Corrections.

“You've got to have a case manager otherwise you've got nothing.”

If support were available prior to and at the point of release, fewer people with ABI would return to prison.

### **What change looks like**

- Corrections Victoria staff are trained to recognise, respect and support people with ABI.
- Justice Plans are available to people with ABI.
- Pre and post-release support is available to all people with ABI and complex needs.

“This should just  
be the beginning.  
We’ve obviously worked  
out we’ve got a  
major problem on our  
hands and it’s just how  
to fix it and how  
to go about it...”

## **CENTRE FOR INNOVATIVE JUSTICE**

The Centre for Innovative Justice (the CIJ) was established by RMIT University in October 2012. RMIT is a global university focused on creating solutions that transform the future for the benefit of people and their environments.

The CIJ is dedicated to finding innovative and workable solutions to complex problems that manifest in the justice system. Our analysis is not limited to problem definition; we strive to develop practical ways to address problems. The CIJ's focus is on identifying alternatives to the traditional approaches to criminal justice, civil dispute resolution and legal service provision. Our mission is to identify strategies that take a holistic approach and address the reasons people come into contact with the justice system.

## **JESUIT SOCIAL SERVICES**

Jesuit Social Services is a social change organisation working to build a just society where all people can live to their full potential.

We partner with community to support those most in need. We work to change policies, practices, ideas and values that perpetuate inequality, prejudice and exclusion.

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**RECOGNITION, RESPECT AND SUPPORT :**  
ENABLING JUSTICE FOR PEOPLE WITH AN  
ACQUIRED BRAIN INJURY

Listening to people who have experience of the criminal justice system and identifying and responding to their needs is critical to developing effective responses. The Enabling Justice project asked people with ABI what they needed when they had contact with the criminal justice system. This report captures their experiences and the three key needs they identified: recognition, respect and support.



**CENTRE FOR INNOVATIVE JUSTICE  
JESUIT SOCIAL SERVICES**

