



A fair and accessible criminal justice system for autistic people.

**Submission to the Parliamentary Inquiry
into Victoria's Criminal Justice System.**

September 2021



About Amaze

Amaze is a community organisation established over fifty years ago by autistic people and their families. We work to build community understanding of autism, influence policy change for autistic people and provide independent, credible information and resources to individuals, families, professionals, government and the wider community.

We are closely connected with the autistic community through our national help line Autism Connect, our peer support networks and community capacity building initiatives.

Amaze is *not a service* provider (for NDIS or otherwise).

About autism

Autism Spectrum Disorder (or ASD) is a neurodevelopmental condition. Autism is not a disease. People are born autistic. It is a lifelong condition and there is no cure, but the way it affects people may change over time as a person grows and matures. Every autistic individual is different.

Autism is highly prevalent and affects people from all walks of life. It is among the biggest disability groups in Australia. Improved recognition of autism and the reclassification of Asperger's Syndrome has contributed to a dramatic increase (217%) of people diagnosed with autism in Australia over the last decade. In 2018 the ABS reported that 1.3% of males, 0.4% of females and 3.2% of children aged 5 – 14 years have an autism diagnosis. Based on childhood diagnosis rates, actual prevalence in the community is likely to be around 2 - 3% which means that the vast majority of autistic adults have not been formally diagnosed.

Autism frequently co-occurs with other conditions including other neurodevelopment conditions (e.g. ADHD, Dyslexia) and Intellectual Disability. 50-70% of autistic people also have mental health conditions.

Acknowledgements

Amaze extends its thanks and gratitude to members of the autism community whose insights and experiences have informed this submission. In particular, we draw heavily on the Autism Alliance Survey conducted in 2020 to inform the Federal Senate Select Committee on Autism's development of a National Autism Strategy. This survey constitutes Australia's largest and most comprehensive consultation survey of autistic people and their families and cares to date, with almost 4,000 responses received.

For further information

Amaze stands ready to assist the Parliamentary Inquiry into Victoria's Criminal Justice System in any way it can. Nicole Rees, Deputy CEO and Executive Manager of Policy & Advocacy can be contacted at Nicole.rees@amaze.org.au to discuss this submission or provide evidence to an inquiry hearing.

Summary of Recommendations

Getting the foundations right

1. Invite a representative from the Global Autism and Criminal Justice System Consortium to share the Consortium's global research and survey findings (available late 2021), regarding interactions between autistic people and the criminal justice system and building a framework for autism and justice.
2. Develop an autism and justice strategy to support autistic people who encounter the criminal justice system. It would cover:
 - Autistic victims, witnesses and alleged offenders.
 - Diversions from involvement in the criminal justice system
 - Accessibility, supports and service systems across the entire justice system, including police, courts and the prison system.

The strategy should be informed by emerging evidence from the Consortium and co-designed with autistic people, their families and carers, and the disability sector. The strategy should be situated as a discrete part of a broader Disability Justice Strategy or the Victorian Autism Plan, with key outcomes, indicators and measures reported against under the Victorian Disability Action Plan.

3. Develop a comprehensive disability screening and data collection strategy, broken down by disability type (including autism), to apply to all people who interact with each stage of the criminal justice system (including police, courts and prison).

Autism accessible courts

4. Develop, as part of the broader Autism and Justice Strategy, a framework for courts that includes:
 - Autism training for all court staff and professionals.
 - A Code of Practice for supporting autistic people attending court.
 - Accessible information and resources.
 - A guideline for creating autism accessible court rooms, following an audit of court buildings for autism accessibility.
5. Complete the Communication Intermediaries Pilot Program trial and fully fund its evaluation. If successful, expand the program for communication specialists to support not only victims of crime and witnesses with communication difficulties to give evidence, but also accused persons.
6. Appoint judges, magistrates and tribunal members with disabilities, and extend Victoria's public sector disability employment targets to these statutory appointments.

Autism accessible prisons and therapeutic pathways

7. Develop an autism accreditation program to support a consistent, comprehensive and transparent approach to supporting autistic people in Victorian prisons, in partnership with autistic people.
8. Build community based therapeutic pathways and facilities or housing for autistic people, in co-design with autistic people and the disability sector.

Access to NDIS supports

9. Develop protocols to identify whether people entering prison are NDIS participants, or are potentially eligible to be participants, and facilitate access requests at the earliest opportunity, in partnership with the Commonwealth government and NDIA.
10. Strengthen understandings of the interface between the NDIS and justice system across Victorian prisons, and better co-ordinate and integrate service systems to ensure all people with disability are fully supported while in prison and when transitioning out of prison.

Overview

I was involved in the justice system from 1994-2000 and it was a truly awful experience. None of the staff had autism knowledge and I was victimised and masked in order to survive to the extent that I lost any sense of who I was... The justice system is - to my mind at least - the worst place for autistic people that there is - Respondent to the Australian Autism Alliance survey, 2020

Amaze welcomes the opportunity to inform the Victorian Parliamentary Inquiry into Victoria's Criminal Justice System. This inquiry provides a unique opportunity to understand the experiences and outcomes of some of Victoria's most vulnerable people that encounter Victoria's criminal justice system each year. Amaze's submission is focussed on how the Victorian Government may prevent and improve interactions between autistic people and the justice system.

Autistic people of all ages are overrepresented and continue to experience a lack of understanding and support across the criminal justice system. In 2020, the Australia Autism Alliance conducted Australia's largest and most comprehensive consultation survey of autistic people and their carers to date, with almost 4,000 responses received. Over one-third (33.4%) of autistic adult respondents reported that they had been involved in the criminal justice system (as a victim, witness or accused). Knowledge and understanding of autism across police, courts and prison about autism was rated as poor by most respondents.

Knowledge and understanding of the police and/or prison about autism.

	Autistic adults (n=257)	Parent/carer on behalf of autistic person (n=185)
Good	3.1	12.4
OK	9.3	24.9
Poor	65.4	55.7
Unsure	22.2	7.0

Responses to Australia Autism Alliance survey, 2020.

Major issues that require attention include:

- **VICTORIA LACKS A POLICY FRAMEWORK ADDRESSING AUTISTIC PEOPLE AND THE JUSTICE SYSTEM:** Despite repeated recommendations from Parliamentary Inquiries, Victoria still has no overarching policy framework that specifically addresses the factors influencing interactions between autistic people and the criminal justice system or aims to improve autistic people's experiences or outcomes.
- **AUTISTIC PEOPLE ARE VULNERABLE IN THE CRIMINAL JUSTICE SYSTEM:** Autistic people are more likely to be victims than offenders, however some autistic people can be more vulnerable to involvement (or perceived involvement) in criminal behaviour than non-autistic people due to some of their autistic traits. A lack of autism understanding among court staff and professionals, including the judiciary and magistrates, is impacting the ability of autistic people to give their best evidence and be heard and can inappropriately sway assessments of behaviour and guilt.
- **AUTISM UNDERSTANDING AND SUPPORT IS LOW:** A lack of autism understanding and appropriate supports (in court, prison and post release) is resulting in poor experiences and outcomes. The failure to provide appropriate supports for autistic people in prison and transitioning out of the prison system, can significantly impact life outcomes and contribute to recidivism.
- **SCREENING AND DATA COLLECTION IS INADEQUATE:** A lack of disability screening and data collection, broken down by disability type (including autism) limits the government's knowledge of the numbers of autistic people in Victoria's remand and prison populations. This limits government's ability to measure and improve experiences and outcomes.
- **AUTISM FRIENDLY PATHWAYS AND FACILITIES ARE NON-EXISTENT:** Many autistic people in Victoria's remand and prison populations would be more appropriately supported through community based therapeutic pathways and facilities, however there are virtually no appropriate therapeutic pathways or facilities for autistic people in Victoria.

- **EMPLOYMENT OF PEOPLE WITH DISABILITY IN THE JUSTICE SYSTEM IS UNCLEAR:** The employment of people with disability across the justice system increases understanding and inclusion and enables lived experience to guide work practices and reforms. Data regarding the numbers of people with disability, broken down by disability type, working across the justice system does not appear to be publicly available. Nor is evidence of whether public sector disability employment targets for 2020 were met across these departments. These targets do not apply to judicial appointments.
- **INTERFACE BETWEEN STATE BASED AND NDIS SUPPORTS IN PRISON REMAINS COMPLEX:** People entering prison are not screened for NDIS eligibility or participation, compromising access to the scheme. Access to appropriate supports also continues to be compromised by a lack of understanding and co-ordination of state based and NDIS supports.

Autistic people have the right to true equity before the law¹, but instead they are being disadvantaged by disabling systems and environments that are having devastating life impacts. Numerous public inquiries have called for specific actions for autistic people but little has been done. These inquiries include the Victorian Parliamentary inquiry into services for people with ASD (2018), the Senate inquiry into Indefinite detention of people with cognitive and psychiatric impairment (2018) and the Victorian Ombudsman’s Investigation into the imprisonment of a woman found unfit to stand trial. The Office of the Public Advocate (OPA) has also undertaken detailed investigations and made recommendations to improve experiences and outcomes of people with cognitive impairments in Victorian prisons.² While we acknowledge broader responses the Victorian Government has taken to improve the justice system for people with disability more generally³, there is still considerable work to be done.

AMAZE CALLS FOR THE FOLLOWING MEASURES:

- An overarching autism and justice strategy.
- Systematic screening and data collection for autism/cognitive disability.
- Autism accessible courts, including staff training.
- Autism accessible prisons and therapeutic pathways, including an autism accreditation program.

While Amaze’s submission is focused on the interaction between autistic people and the criminal justice system, we share many concerns and aspirations of the broader disability and social sector. We endorse submissions made to this inquiry by the OPA, the Victorian Council of Social Services (VCOSS) and the Federation of Community Legal Services (FCLS). In particular, we support the OPA’s call for a Disability Justice Strategy and cognitive and NDIS eligibility screening for prisoners entering prison. We also strongly support the calls by VCOSS and the FCLS for a shift in focus and funding away from punishment and towards diversion, early intervention and a comprehensive support system for Victorians at risk.

Amaze encourages the inquiry to hear from autistic people (and their families and carers) with lived experience of Victoria’s criminal justice system. Amaze would be pleased to support the inquiry in ensuring an accessible pathway and environment is available for autistic people to give evidence. Amaze would also be pleased to give evidence at a hearing held by the inquiry.

¹ United Nations Convention on the Rights of Persons with Disabilities; Disability Act 2006 (Vic); Equal Opportunity Act 2010 (Vic).

² Office of the Public Advocate, 2021. Decision Time: Activating the rights of adults with cognitive disability. Office of the Public Advocate, Victoria. Available at <https://www.publicadvocate.vic.gov.au/opa-s-work/research/141-decision-time>; Victorian Ombudsman, 2018. Investigation into the imprisonment of a woman found unfit to stand trial. 16 October 2018. Available at <https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-the-imprisonment-of-a-woman-found-unfit-to-stand-trial/>

³ *Disability Act* 2006 (Vic); Absolutely everyone: State disability plan 2017-2020 (Vic); Corrections Victoria Disability Framework 2016-2019; Victorian Autism Plan 2018; Disability Action Plan Framework 2020 – 2022 (Vic), and associated annual implementation plans; Youth Justice Strategic Plan 2020 – 2024.

1. Autistic people face particular vulnerabilities in the criminal justice system.

I think that most autistic people become completely overwhelmed when dealing with the criminal justice system, and are often steamrolled by the authoritarian approach and lack of compassion and empathy of those working within the system. - Respondent to the Australian Autism Alliance survey, 2020.

- **AUTISTIC PEOPLE CAN BE VULNERABLE TO COMMITTING A CRIME:** Autistic people are more likely to be victims and witnesses of crime than offenders.⁴ There is no reliable evidence to suggest that autistic people as a group are any more or less likely to intentionally commit a crime than non-autistic people. However, some autistic people can be vulnerable to involvement (or perceived involvement) in criminal behaviour for reason of their autistic characteristics, including theory of mind deficits (ability to understand the feelings, emotions or intentions of others), social communication differences, emotional regulation difficulties and co-occurring psychiatric or mental health conditions.⁵ Autistic people can fail to understand when they are being taken advantage of, and unknowingly coerced into criminal behaviour. Meltdowns resulting from sensory overwhelm or other triggers can be misinterpreted as aggressive behaviours. A misreading of social cues can lead to inappropriate social conduct/advances. Early intervention and appropriate supports across a person's lifetime are key to reducing these vulnerabilities and improving life outcomes.⁶
- **AUTISTIC PEOPLE OFTEN FACE MULTIPLE LAYERS OF DISADVANTAGE OR DISCRIMINATION:** Autistic people often experience multiple forms of discrimination, marginalisation, and hardship (including unemployment, low education attainment, social isolation and psycho-social disability) which increases their risk of becoming involved in the justice system.⁷ Victorians in prison mostly come from disadvantaged backgrounds, with poorer health than the general population. In 2018, 1 in 3 prison entrants had an education level of Year 9 or below.⁸ ABS data shows that approximately 32% of autistic students achieve an education attainment level of year 10 or below, compared with 16% of the general student population.⁹ There is a significant gap in research regarding the

⁴ Allison S et al, 2019. The vulnerability experiences quotient (VEQ): A study of vulnerability, mental health and life satisfaction in Autistic adults. *Autism Research*, 12(10), 1516-1528. Available at <https://doi.org/10.1002/aur.2162>; Brown-Lavoie S, 2014. Sexual knowledge and victimization in adults with autism spectrum disorders. *Journal of Autism and Developmental Disorders*, 44(9), 2185-2196. Available at <https://doi.org/10.1007/s10803-014-2093-y>

⁵ Weiss J and Fardella M, 2018. Victimization and Perpetration Experiences of Adults with Autism. *Front Psychiatry*. 2018; 9: 203. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5980973/>; Alleley C, 2016. Recent Advances in Autism, Chapter: Autism Spectrum Disorders in the Criminal Justice System: Police Interviewing, the Courtroom and the Prison Environment, Publisher: SM Group Open Access eBooks, pp.1-13. Available

at https://www.researchgate.net/publication/290396155_Autism_Spectrum_Disorders_in_the_Criminal_Justice_System_Police_Interviewing_the_Courtroom_and_the_Prison_Environment; King C and Murphy G, 2014. A systematic review of people with autism spectrum disorder and the criminal justice system. *J Autism Dev Disord*. 2014 Nov;44(11):2717-33; Lerner M et al (2012) Emerging Perspectives on Adolescents and Young Adults With High-Functioning Autism Spectrum Disorders, Violence, and Criminal Law. *Journal of the American Academy of Psychiatry and the Law*. Online April 2012, 40 (2) 177-190. Available at <http://jaapl.org/content/40/2/177.long> .

⁶ Victorian Parliament, 2016. Inquiry into services for people with ASD – Final Report. Family and Community Development Committee. Available at <https://www.parliament.vic.gov.au/fcdc/inquiries/article/2588>

⁷ Mason D et al, 2021. A Meta-analysis of Outcome Studies of Autistic Adults: Quantifying Effect Size, Quality, and Meta-regression. *J Autism Dev Disord* 51, 3165–3179. Available at <https://doi.org/10.1007/s10803-020-04763-2>

⁸ AIHW, 2018. The Health of Australia's Prisoners, available at <https://www.aihw.gov.au/reports/prisoners/health-australia-prisoners-2018/summary>

⁹ ABS, 2018. ABS Survey of Disability, Ageing and Carers: Summary of Findings – 2018. Available at <https://www.abs.gov.au/statistics/health/disability/disability-ageing-and-carers-australia-summary-findings/latest-release#autism-in-australia>

experiences of autistic First Nations people engaged in the justice system. This cohort is overrepresented and face worse experiences and outcomes than their non-indigenous peers.¹⁰ The LGBTIQ community is also vulnerable to disadvantage and poor experiences and outcomes in the justice system.¹¹ Rates of people identifying as LGBTIQ are particularly high among autistic people, with a higher proportion of autistic people compared non-autistic people identifying as LGBTIQ. A recent robust and comprehensive global study found that transgender and gender-diverse individuals were 3 to 6 times as likely to be autistic than were cisgender individuals, after controlling for age and educational attainment.¹²

- **POOR AUTISM UNDERSTANDING IMPACTS INTERACTIONS AND ASSESSMENTS OF GUILT:** A lack of autism understanding impacts the interaction of professionals and staff across the justice system with autistic people, as well as assessments of behaviour and guilt.¹³ If arrested or charged with a crime, difficulties with social communication can result in misinterpretations of questions in interviews, failing to understand one's rights or failing to give appropriate, accurate, reliable responses to the police or courts. A lack of eye contact and some stimming behaviours can also be misinterpreted as signs of guilt, and melt downs arising from sensory overload, stress and/or anxiety can be misinterpreted as aggressive or defiant behaviour.¹⁴
- **MISDIAGNOSIS AND UNDIAGNOSED AUTISM INCREASES VULNERABILITY:** The vast majority of autistic adults are undiagnosed. Many are also misdiagnosed with other conditions, particularly mental health conditions which can lead to misunderstandings and inappropriate support services.¹⁵ Many autistic people have co-occurring mental health conditions (50 – 70%), also leading to vulnerabilities and requiring specific supports and systems responses.
- **MASKING:** Autistic people with relatively good verbal language often mask their underlying social communication difficulties during interviews or questioning, exacerbating a lack of understanding and barriers to accessing support.¹⁶ Autistic women are at particular risk of misdiagnosis and/or masking their autistic characteristics.¹⁷

¹⁰ Shea L, Cooper D & Wilson AB, 2021. Preventing and improving the interaction between autistic individuals and the criminal justice system: A roadmap for research. International Society for Autism Research. Available at <https://onlinelibrary.wiley.com/doi/abs/10.1002/aur.2594>

¹¹ Australian Human Rights Commission, 2014. Face the Facts: Lesbian, Gay, Trans and Intersect People. Available at https://www.humanrights.gov.au/7_FTF_2014_LGBTI.pdf

¹² Warrier V et al, 2020. Elevated rates of autism, other neurodevelopmental and psychiatric diagnoses, and autistic traits in transgender and gender-diverse individuals. Nature Communications 2020; 11: 3959. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7415151/>

¹³ Ibid.

¹⁴ Alleley C, 2016. Recent Advances in Autism, Chapter: Autism Spectrum Disorders in the Criminal Justice System: Police Interviewing, the Courtroom and the Prison Environment, Publisher: SM Group Open Access eBooks, pp.1-13. Available at https://www.researchgate.net/publication/290396155_Autism_Spectrum_Disorders_in_the_Criminal_Justice_System_Police_Interviewing_the_Courtroom_and_the_Prison_Environment.

¹⁵ Victorian Parliament, 2016. Inquiry into services for people with ASD – Final Report. Family and Community Development Committee. Available at <https://www.parliament.vic.gov.au/fcdc/inquiries/article/2588>

¹⁶ Alleley, C, 2016. Recent Advances in Autism, Chapter: Autism Spectrum Disorders in the Criminal Justice System: Police Interviewing, the Courtroom and the Prison Environment, Publisher: SM Group Open Access eBooks, pp.1-13. Available at https://www.researchgate.net/publication/290396155_Autism_Spectrum_Disorders_in_the_Criminal_Justice_System_Police_Interviewing_the_Courtroom_and_the_Prison_Environment

¹⁷ Victorian Parliament, 2016. Inquiry into services for people with ASD – Final Report. Family and Community Development Committee. Available at <https://www.parliament.vic.gov.au/fcdc/inquiries/article/2588>

2. An autism and justice strategy is needed

- **NO STRATEGY FOR AUTISM AND JUSTICE:** This submission outlines factors influencing poor experiences and outcomes for autistic people in the criminal justice system, including a lack of autism screening and data collection, a lack of supports and services and a lack of therapeutic pathways and facilities. Despite poor experiences and outcomes, there is no policy, program and practice approach addressing the interface of autistic people with the justice system.
- **FAILURE TO ADDRESS THE VICTORIAN AUTISM INQUIRY'S RECOMMENDATIONS:** The Victorian Parliamentary Inquiry into services and supports for people with ASD highlighted concerns regarding the lack of appropriate pathways, supports and facilities for autistic people imprisoned in Victoria. It recommended autism screening and data collection, better access to state-based supports based on needs assessments, a housing strategy for autistic people transitioning back to the community and better co-ordination of NDIS and state-based supports.¹⁸ In its response to the inquiry, the Victorian government committed to developing an Autism State Plan but did not identify justice as a priority area under the plan. It did commit to developing a strategy for building ASD competency across mainstream workforces, including justice (and highlighted existing general commitments under the then Corrections Victoria Disability Framework 2016-2019), however it addressed no autism specific issues raised by the inquiry.¹⁹ The Victorian Autism Plan (2019) also failed to address the justice related recommendations of the inquiry. It simply reaffirmed existing commitments to better identify autistic children and parents in the Children's Court Clinic, develop a youth justice strategy and improve access to NDIS and state-based supports in prisons.²⁰ While these were welcome commitments, they did not address the issues raised by the inquiry.
- **A COMPREHENSIVE AUTISM AND JUSTICE STRATEGY IS NEEDED:** An evidence informed strategy applying to the whole of the justice system (from police to prisons), co-designed with autistic people with lived experience of the criminal justice system, is required. The strategy must comprehensively address the factors influencing the engagement of autistic people in the criminal justice system, divert autistic people from the system and support people who are accused of and/or found guilty of a crime. It should form part of a broader Disability Justice Strategy and/or the Victorian Autism State Plan, with key outcomes, indicators and measures reported against under the Victorian Disability Action Plan.
- **VICTORIA CAN LEARN FROM INTERNATIONAL EXPERIENCE:** This inquiry would benefit from a major international initiative aimed at improving interactions between autistic people and the criminal justice system. The Global Autism and Criminal Justice System Consortium is an international group comprising researchers, criminal justice professionals, autistic people and their families, funded by the International Society of Autism Research (INSAR). The Consortium, which includes researchers from Autism Spectrum Australia (Aspect) are currently undertaking a study that, to date, has been completed by over 3000 key stakeholders from 10 nations. The study is exploring how interactions between autistic people and the criminal justice system may be improved and

¹⁸ Victorian Parliament, 2016. Inquiry into services for people with ASD – Final Report. Family and Community Development Committee. Available at <https://www.parliament.vic.gov.au/fcdc/inquiries/article/2588>

¹⁹ Victorian Government, 2017. Response to Inquiry into services for people with ASD. Available at https://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/58th/Autism/Response_to_the_Parliamentary_Inquiry_into_Services_for_People_with_Autism_Spectrum_Disorder.pdf

²⁰ Victorian Parliament, 2019. Victorian Autism Plan. Available at https://www.statedisabilityplan.vic.gov.au/application/files/5115/7543/9606/1805022_Victorian_Autism_Plan-WEB.pdf

what policy and practice changes are needed to better support autistic people who encounter the system.²¹ In addition, a systematic review of international evidence has been conducted. Survey results and the review of evidence will form the basis of a policy brief which is **expected to be published later this year**.

A key focus of INSAR's research is how the United States' Sequential Intercept Model (SIM) may be used to guide the development of a best practice framework for states to divert autistic people from involvement in the criminal justice system and appropriately support autistic people who are accused and/or found guilty of a crime.²² Initially developed for diversion of people with mental health conditions, it works from the premise that people should not be arrested or incarcerated for actions, behaviours or circumstances that lack criminal intent or relate to their condition.²³ It provides a framework to address the factors influencing people with mental health conditions to enter or re-enter the justice system, identifies opportunities for diversion and provides a strategy for the development of appropriate information resources and supports (including staff training). There is strong and consistent evidence that the SIM has significantly improved experiences and outcomes for people with mental health conditions.²⁴

Recommendation 1

Invite a representative from the Global Autism and Criminal Justice System Consortium to share the Consortium's global research and survey findings (available late 2021) regarding interactions between autistic people and the criminal justice system, and building a framework for autism and justice.

Recommendation 2

Develop an autism and justice strategy to support autistic people who come into contact with the criminal justice system. It would cover:

- Autistic victims, witnesses and alleged offenders.
- Diversions from involvement in the criminal justice system
- Accessibility, supports and service systems across the entire justice system, including police, courts and the prison system.

The strategy should be informed by emerging evidence from the Consortium and co-designed with autistic people, their families and carers, and the disability sector. The strategy should be situated as a discrete part of a broader Disability and Justice Plan or the Victorian Autism Plan, with key outcomes, indicators and measures reported against under the Victorian Disability Action Plan.

²¹ See <https://www.autismspectrum.org.au/about-autism/our-research/our-research-program/cjs>

²² Shea L, Cooper D & Wilson AB, 2021. Preventing and improving the interaction between autistic individuals and the criminal justice system: A roadmap for research. International Society for Autism Research. Available at <https://onlinelibrary.wiley.com/doi/abs/10.1002/aur.2594>

²³ Ibid.

²⁴ Ibid.

3. Autism specific screening and data collection is needed.

- **PEOPLE WITH COGNITIVE DISABILITY ARE OVERREPRESENTED IN THE JUSTICE SYSTEM:** There is evidence that people with disability, particularly cognitive and/or psychosocial disability are significantly overrepresented in Victoria's criminal justice system.²⁵ This is most likely due to the vulnerability of some people with cognitive disability, including autistic people to criminal behaviour (or perceived criminal behaviour) , as well as the misunderstanding, disadvantage, inequalities and poor pathways they may encounter in the justice system. Victoria's Youth Justice Strategic Plan recognises that 30% of young people in the youth justice system have a cognitive impairment that impacts on daily functioning (although this number is likely to be much higher given many young people may be undiagnosed).
- **POOR SCREENING AND DATA COLLECTION:** While there is evidence of overrepresentation, a lack of systematic disability screening and data collection (broken down by disability type, including autism) limits understandings of the real numbers of people with disability (including disability types) entering Victoria's remand or prison populations. It also substantially impacts on the Victorian Government's capacity to measure and improve upon the experiences and outcomes of people with disability, including autism, that interact with the criminal justice system.
- **NO ACTION FOLLOWING PREVIOUS INQUIRIES:** In 2016, the Victorian Parliament's Inquiry into services for people with autism recommended that data be collected on the numbers of autistic people interacting with the justice system, and that this data be provided to the responsible Minister. In 2016, a Senate Community Affairs Reference committee also recommended that COAG develop and implement a disability screening strategy for all Australian jurisdictions. It stated that this screening strategy should apply to all people (adults and minors) who engage with the criminal justice system and that screening should occur at multiple points: first contact with police, courts, prisons and related facilities.²⁶ In 2018 the Victorian Ombudsman, and in 2018 and 2020 the OPA, similarly recommended the development of protocols to screen for cognitive disability and identify whether people entering corrections services are NDIS participants or are potentially eligible to be so (see further discussion below).²⁷

²⁵ Victorian Parliament, 2016. Inquiry into services for people with ASD – Final Report. Family and Community Development Committee. Available at <https://www.parliament.vic.gov.au/fcdc/inquiries/article/2588>; Office of the Public Advocate, 2021. Decision Time: Activating the rights of adults with cognitive disability. Office of the Public Advocate, Victoria. Available at <https://www.publicadvocate.vic.gov.au/opa-s-work/research/141-decision-time>; Victorian Ombudsman, 2018. Investigation into the imprisonment of a woman found unfit to stand trial. 16 October 2018. Available at <https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-the-imprisonment-of-a-woman-found-unfit-to-stand-trial/>

²⁶ Commonwealth of Australia, 2016. Indefinite detention of people with cognitive and psychiatric impairment in Australia. The Senate Community Affairs Reference Committee. Available at https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/IndefiniteDetention45/Report

²⁷ Office of the Public Advocate, 2021. Decision Time: Activating the rights of adults with cognitive disability. Office of the Public Advocate, Victoria. Available at <https://www.publicadvocate.vic.gov.au/opa-s-work/research/141-decision-time>; Office of the Public Advocate, 2018. The Illusion of Choice and Control. Available at <https://www.publicadvocate.vic.gov.au/opa-s-work/research/211-the-illusion-of-choice-and-control>; Victorian Ombudsman, 2018. Investigation into the imprisonment of a woman found unfit to stand trial. 16 October 2018. Available at <https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-the-imprisonment-of-a-woman-found-unfit-to-stand-trial/>

- **INADEQUACIES OF VICTORIA’S AUTISM PLAN AND DISABILITY ACTION PLAN FRAMEWORK:** While Victoria’s Autism Plan (2019) recognises the need to “develop a clearer picture on the number of autistic people in custody in Victoria and to consider opportunities to support them better”, it does not provide a pathway towards screening or comprehensive data collection. Victoria’s Disability Action Plan Framework 2019-22 places a strong emphasis on data collection to benchmark proposals and underpin strategies. The Framework’s Implementation Plan 2020-2021 indicates an action item to review practices for collecting disability information. However, neither the Framework or Implementation Plan provide a pathway or strategy for screening or collecting data on disability at each point in the justice system. Similarly, through the Victorian Youth Justice Strategic Plan 2020 – 2024, Youth Justice has committed to working in partnership with DHHS, the NDIS and key service providers to screen for intellectual disability. However, it does not provide for autism screening which would require a separate autism assessment using validated autism assessment tools.

Recommendation 3

The Victorian government develop a comprehensive disability screening and data collection strategy, broken down by disability type (including autism), to apply to all people who interact with each stage of the criminal justice system (including police, courts and prison).

4. Courts need to be autism accessible

The courts and justice system is overworked and has little practical knowledge in neurodiversity. The assumption seems to be that all bodies in the system are neurotypical and the processes have been created accordingly with very little, if any, ability to be flexible in the case of invisible disabilities. - Respondent to the Australian Autism Alliance survey, 2020.

- **CO-ORDINATED SUPPORTS ARE LACKING:** A range of supports are available for people with disability through the Court Network service and via specialist lists and programs in the Magistrates Court, however it is unclear whether they are adequate to identify and support autistic people. An audit of current services and systems is required. Easy to access information resources, such as social scripts, that support autistic people to navigate the court system, engage in the proceedings that impact them and make their own decisions are essential.²⁸
- **AUTISM AWARENESS AND UNDERSTANDING IS LOW:** While disability awareness training is delivered across Victoria's justice system, including by VALID on people with intellectual disability, we are not aware of systematic autism training. Amaze is concerned that lawyers and judicial staff and professionals continue to lack an understanding of autism or how a person's autistic traits may have increased their vulnerability to engage in criminal behaviour and can impact the person's presentation or ability to give their best evidence. Amaze is also concerned that lawyers and judicial staff may lack knowledge of how to question and support autistic people in a trauma informed way, noting that a substantial number of autistic people entering the justice system are likely to have been victims of crime or trauma themselves. It is essential that lawyers and judges understand autism and how autistic characteristics may impact a person's evidence and understanding of court processes. They must also understand how to ensure the most appropriate supports are provided and how they may empower autistic people to make their own decisions.
- **EVALUATE THE COMMUNICATION INTERMEDIARIES PILOT PROGRAM:** The Victorian government has implemented a Communication Intermediaries Pilot Program trial to assist victims of crime and witnesses with communication difficulties to give evidence to police and in court.²⁹ The Disability Action Plan Framework 2019-2022: 2020-2021 Implementation Plan highlights the challenges of implementing the program remotely during Covid. However, Amaze encourages the government to ensure this trial is completed and that its evaluation is fully funded and made available to the public. If it is successful, the program should be available in all courts and support not only victims of crime and witnesses, but also accused persons.
- **CREATE ACCESSIBLE COURT ROOMS:** Accessible court rooms are required to enable autistic people to engage in proceedings that affect them and give their best evidence, whether as a victim, witness or accused person. Further research is required into adjustments that may be made to the built environment and services offered to ensure true accessibility. Adjustments may include quiet rooms, court rooms designed to meet sensory and communication needs and adjustments to rules relating to whether the public are permitted in the court room, permitted staff numbers

²⁸ Office of the Public Advocate, 2021. Decision Time: Activating the rights of adults with cognitive disability. Office of the Public Advocate, Victoria. Available at <https://www.publicadvocate.vic.gov.au/opa-s-work/research/141-decision-time>

²⁹ See Victorian Intermediaries Pilot Program at <https://www.justice.vic.gov.au/justice-system/courts-and-tribunals/victorian-intermediaries-pilot-program>

etc. Research should be undertaken, and court rooms and services designed or upgraded, in co-design with autistic people, their families and carers and the disability sector.

- **VICTORIA NEEDS A DIVERSE JUDICIARY:** A judiciary is strongest and most reflective of the society it seeks to represent when it is diverse and represents a range of backgrounds, skills and experiences. The appointment of judges, magistrates and tribunal members with disabilities would enrich the judiciary and criminal justice system, and improve understanding of the experiences and needs of people with disabilities that come before them.
- **MEET PUBLIC SECTOR DISABILITY EMPLOYMENT TARGETS:** The Victorian Public Sector Disability Action Plan 2018 – 2025 requires that 6% of public service employees are people with disability by 2020, increasing to 12% by 2025. These targets are a valuable step towards diversity in the workplace and helping to improve understandings of disability and inclusion across workplaces. Amaze looks forward to public reporting on progress towards these targets across the Department of Justice and Community Safety, and Corrections Victoria, broken down by disability type. To promote a diverse judiciary with lived experience of disability, these targets should also apply to judicial and tribunal member appointments, requiring 12% of all appointments to be people with disability by 2025.

Recommendation 4

Develop, as part of the broader Autism and Justice Strategy, a framework for courts that includes:

- Autism training for all court staff and professionals.
- A Code of Practice for supporting autistic people attending court.
- Accessible information and resources.
- A guideline for creating autism accessible court rooms, following an audit of court buildings for autism accessibility.

Recommendation 5

Complete the Communication Intermediaries Pilot Program trial and fully fund its evaluation. If successful, expand the program for communication specialists to support not only victims of crime and witnesses with communication difficulties to give evidence, but also accused persons.

Recommendation 6

Appoint judges, magistrates and tribunal members with disabilities, and extend Victoria's public sector employment targets to these statutory appointments.

5. Develop an accreditation program to improve autism understanding, services and supports in Victorian prisons, and create alternative pathways and facilities.

I work with people who are disabled and incarcerated. They receive no support within the prison system. The NDIS needs to be made available to incarcerated people to get specialist treatments and supports. - Respondent to the Australian Autism Alliance survey, 2020.

- **PRISON CAN BE PARTICULARLY COMPLEX AND CHALLENGING FOR AUTISTIC PEOPLE:** Among autistic people, sensory sensitivities can contribute to overwhelm and meltdown, with the resulting behaviour being misunderstood as defiant or aggressive. Crowds and harsh lighting can impact daily functions and contribute to overwhelm. Autistic people may also be more vulnerable to experiencing bullying, exploitation, social isolation and abuse in prison.³⁰ Prison staff without a good understanding of autism (or adequate autism training) are unable to adequately recognise and support the needs of autistic people.³¹ Obligations to develop and implement positive behaviour support plans are often not adhered to, contributing to the use of restrictive practices (including seclusion, and physical and chemical restraints).³² In 2018, the Victorian Ombudsman reported that people with cognitive impairment are more likely to reoffend than the general population due to a lack of support in and post prison.³³
- **INADEQUATE SUPPORTS AND SERVICES FOR AUTISTIC PEOPLE IN PRISON:** In 2017, the Victorian Parliamentary Inquiry into services for people with autism recognised the inadequacy of supports and services for autistic people in Victorian prisons. It recommended that Corrections Victoria provide specific supports to autistic people while in prison, based on an assessment of needs. It also recommended that corrections staff be provided with training to develop the capacity to engage with autistic people and understand their needs.³⁴ These recommendations remain outstanding.

The Victorian Government's response to the inquiry highlighted existing commitments under the then Corrections Victoria Disability Framework 2016-2019 to improve services and supports for

³⁰ Alleley C, 2016. Recent Advances in Autism, Chapter: Autism Spectrum Disorders in the Criminal Justice System: Police Interviewing, the Courtroom and the Prison Environment, Publisher: SM Group Open Access eBooks, pp.1-13. Available at https://www.researchgate.net/publication/290396155_Autism_Spectrum_Disorders_in_the_Criminal_Justice_System_Police_Interviewing_the_Courtroom_and_the_Prison_Environment.

³¹ Victorian Ombudsman, 2018. Investigation into the imprisonment of a woman found unfit to stand trial. 16 October 2018. Available at <https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-the-imprisonment-of-a-woman-found-unfit-to-stand-trial/>; Victorian Parliament, 2016. Inquiry into services for people with ASD – Final Report. Family and Community Development Committee. Available at <https://www.parliament.vic.gov.au/fcdc/inquiries/article/2588>

³² Victorian Ombudsman, 2018. Investigation into the imprisonment of a woman found unfit to stand trial. 16 October 2018. Available at <https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-the-imprisonment-of-a-woman-found-unfit-to-stand-trial/>

³³ Victorian Ombudsman, 2018. Investigation into the imprisonment of a woman found unfit to stand trial. 16 October 2018. Available at <https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-the-imprisonment-of-a-woman-found-unfit-to-stand-trial/>³⁴ Victorian Parliament, 2016. Inquiry into services for people with ASD – Final Report. Family and Community Development Committee. Available at <https://www.parliament.vic.gov.au/fcdc/inquiries/article/2588>

³⁴ Victorian Parliament, 2016. Inquiry into services for people with ASD – Final Report. Family and Community Development Committee. Available at <https://www.parliament.vic.gov.au/fcdc/inquiries/article/2588>

people with disability in Victorian prisons. It also highlighted the Disability Pathways Program integrating case management alongside clinical, custodial and educational programs to support offenders and prisoners with cognitive impairment.³⁵ The effectiveness of this framework and program does not appear to have been evaluated. Accordingly, it is difficult to know what progress has been made, whether any autism specific training and supports were provided and whether they were effective. While the Disability Action Plan Framework 2019 – 2022 identified a commitment to develop a new Corrections Victoria Disability Framework 2020 – 2022, this Framework is yet to be released and Amaze is unaware of its status.

The Victorian Autism Plan (2019) also failed to address the inquiries recommendations. It simply recognised that staff need to connect autistic people early with appropriate support to avoid repeat contact with the justice system. Through its Youth Justice Strategic Plan 2020 – 2024, Youth Justice in Victoria has committed to working in partnership with DHHS, the NDIS and key service providers to support young people with cognitive impairment through connected service provision, refer young people with disability to the NDIS Complex Support Needs pathway and improve coordination and integration of NDIS processes and funded supports within the justice system. However, it does not provide for the development or delivery of autism specific supports and services. Urgent action is required to meet the support needs of autistic people of all ages in Victorian prisons.

- **DEVELOP AN AUTISM ACCREDITATION PROGRAM, GUIDED BY THE UK APPROACH:** The current inquiry should be guided by the transparent and evidence-based autism audit and autism accreditation program for prisons, developed by the National Autistic Society in the United Kingdom.³⁶ The audit demonstrated the need for a consistent and coordinated whole of prison approach to supporting autistic people and led to the development of autism standards. The standards cover all aspects of prison life, including education, mental health and primary care to ensure a consistent approach is taken to supporting autistic people within and across UK prisons. The standards aim to set out the appropriate adjustments and levels of autism understanding expected across the different functions of any prison, as well as any adjustments needed to prison processes. The standards cover four key areas – education, discipline, mental health and primary care. Each of the standards focuses on environment, behaviour support and training and development for prison staff (or indeed anyone who works across the justice system). The program also provides for the appointment of ‘Autism Champions’ in prison who undergo special training about autism so they can be a resource for other staff, the development of behaviour support plans and guidelines for staff to ensure consistent support for autistic people within and across prison settings. Services and supports for autistic people should be developed in co-design with autistic people and the disability sector.
- **CREATE THERAPEUTIC PATHWAYS FOR AUTISTIC PEOPLE:** Community based therapeutic pathways would often be more appropriate than prison and lead to better outcomes for autistic people.³⁷

³⁵ Victorian Government, 2017. Response to Inquiry into services for people with ASD. Available at https://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/58th/Autism/Response_to_the_Parliamentary_Inquiry_into_Services_for_People_with_Autism_Spectrum_Disorder.pdf

³⁶ Lewis A et al, 2015. Development and implementation of autism standards for prisons. *Journal of Intellectual Disabilities and Offending Behaviour*, 6 (2), pp. 68 – 80. See also, Hughes C, 2016. Developing Autism Accreditation for prison services. National Autistic Society, available at <https://www.autism.org.uk/advice-and-guidance/professional-practice/accreditation-prison>; Hess P, 2020. Autism Behind Bars – Prison are often ill equipped to handle autistic inmates, who are at risk for mental health problems and abuse, available at <https://www.spectrumnews.org/features/deep-dive/autism-behind-bars>.

³⁷ Victorian Ombudsman, 2018. Investigation into the imprisonment of a woman found unfit to stand trial. 16 October 2018. Available at <https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-the-imprisonment-of-a-woman-found-unfit-to-stand-trial/>;

In Victoria supervised and compulsory treatment orders are only available to people with intellectual disability or mental health conditions.³⁸ While autistic people with co-occurring intellectual disability or mental health conditions may be able to access these orders, they are not necessarily suited to the needs of autistic people. Amaze is aware of no other clear pathway (with legislative oversight) for autistic people to be assessed, referred to and appropriately supported in community based therapeutic environments suited to their needs.

- **BUILD THERAPEUTIC FACILITIES FOR AUTISTIC PEOPLE:** Even if a pathway did exist, Victoria's corrections system provides no appropriate therapeutic facilities for autistic women. There are extremely limited options for male prisoners with intellectual disability (which will include some autistic men),³⁹ however, these have extensive waiting lists. Victoria's corrections system provides no appropriate therapeutic facilities for autistic women.⁴⁰ Amaze welcomes the pilot being undertaken for women with cognitive disability and complex support needs at Dame Phyllis Frost Centre. The pilot aims to identify best practice custodial settings for prisoners with disability and complex support needs, trial a specialised disability pathway, trial staff training and inform the development of future pathways and facilities. This trial must be fully funded and evaluated and if successful, may inform a consistent and systematic approach to supporting prisoners with cognitive impairments in all of Victoria's prisons. However, this should not distract from the urgent need to build therapeutic facilities outside of the prison system and ensure prisons and community based therapeutic facilities meet the specific needs of autistic men and women
- **CRIMINALISATION OF PERSON'S UNFIT TO STAND TRIAL OR NOT CRIMINALLY RESPONSIBLE:** The *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) does provide therapeutic pathways outside of the criminal justice system for people with different types of conditions, including autism, who are found unfit to stand trial or not criminally responsible because of their condition. However, there is evidence that autistic people subject to this Act have continued to be held indefinitely or for a disproportionate amount of time in inappropriate non-therapeutic correctional facilities as no appropriate therapeutic facilities have been available. While proposed reforms to the Act will improve protections, pathways and outcomes for people subject to the Act, appropriate facilities are urgently needed.⁴¹

Recommendation 7

Develop an autism accreditation program to support a consistent, comprehensive and transparent approach to supporting autistic people in Victorian prisons, in partnership with autistic people.

Recommendation 8

Build community based therapeutic pathways and facilities or housing for autistic people, in co-design with autistic people and the disability sector.

³⁸ Disability Act 2006 (Vic); Mental Health Act 2014 (Vic).

³⁹ Victorian Ombudsman, 2018. Investigation into the imprisonment of a woman found unfit to stand trial. 16 October 2018. Available at <https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-the-imprisonment-of-a-woman-found-unfit-to-stand-trial/>;

⁴⁰ Victorian Ombudsman, 2018. Investigation into the imprisonment of a woman found unfit to stand trial. 16 October 2018. Available at <https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-the-imprisonment-of-a-woman-found-unfit-to-stand-trial/>; Victorian Parliament, 2016. Inquiry into services for people with ASD – Final Report. Family and Community Development Committee. Available at <https://www.parliament.vic.gov.au/fcdc/inquiries/article/2588>

⁴¹ Crimes (Mental Impairment and Unfitness to be Tried) Reform Bill 2020

6. Identify NDIS participants and provide coordinated, consistent NDIS and state-based supports.

- **NO NDIS ELIGIBILITY SCREENING:** Upon entering the justice system, people are not systematically or consistently screened for eligibility to access the NDIS. Identified NDIS participants are not systematically or consistently supported to identify goals and supports that may reduce recidivism while in prison.⁴² Access to service providers and NDIS supports is patchy and inconsistent across prisons.⁴³ A framework that identifies and better integrates services provided by the Victorian State Government and the NDIS is urgently required.
- **INCONSISTENT ACCESS TO SUPPORTS:** The NDIA's Justice system guide for NDIS participants⁴⁴ is a welcome step towards supporting people with disability to understand the types of supports they may access from the NDIA and state-based services while in prison. However, the interface between the NDIS and the justice system remains complex and continues to require clarity to ensure autistic people do not fall between the cracks while in, and when leaving the prison system. The NDIA and Victorian government must continue to work with prisons to ensure a consistent approach is taken within and across all Victorian prisons. NDIA Justice Liaison Officers have recently been introduced to provide a single point of contact for staff within the justice system to coordinate supports for NDIS participants, particularly as they prepare to transition back to the community. However, a clear framework providing support throughout the NDIS process (from screening for eligibility, to planning to plan implementation) is urgently needed.
- **INADEQUATE COMMUNITY TRANSITION SUPPORT:** For autistic people transitioning out of the corrections system, recidivism is influenced by the inadequacies of transition planning known as 'through care', a lack of appropriate transition pathways, limited access to skilled service providers and support coordinators, and a severe lack of appropriate housing.⁴⁵ The lack of service providers willing and adequately trained to work with people with complex support needs has resulted in a very thin market and lack of appropriate supports for this cohort. The Victorian Government and NDIA must continue to work towards ensuring provider of last resort mechanisms are available and providers are adequately trained and resourced.

Recommendation 9.

Develop protocols to identify whether people entering prison are NDIS participants, or are potentially eligible to be participants, and facilitate access requests at the earliest opportunity, in partnership with the Commonwealth government and NDIA.

Recommendation 10

Strengthen understandings of the interface between the NDIS and justice system across Victorian prisons, and better co-ordinate and integrate service systems to ensure all people with disability are fully supported while in prison and when transitioning out of prison.

⁴² Office of the Public Advocate, 2018. The Illusion of Choice and Control. Available at <https://www.publicadvocate.vic.gov.au/opa-s-work/research/211-the-illusion-of-choice-and-control>; Victorian Ombudsman, 2018. Investigation into the imprisonment of a woman found unfit to stand trial. 16 October 2018. Available at <https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-the-imprisonment-of-a-woman-found-unfit-to-stand-trial/>

⁴³ Ibid.

⁴⁴ NDIA, 2021. Justice System Guideline. Available at <https://ourguidelines.ndis.gov.au/how-ndis-supports-work-menu/justice-system>.

⁴⁵ Victorian Ombudsman, 2018. Investigation into the imprisonment of a woman found unfit to stand trial. 16 October 2018. Available at <https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-the-imprisonment-of-a-woman-found-unfit-to-stand-trial/>; Office of the Public Advocate, 2018. The Illusion of Choice and Control. Available at <https://www.publicadvocate.vic.gov.au/opa-s-work/research/211-the-illusion-of-choice-and-control>

