

NEURODIVERSITY (IN)JUSTICE: LEARNINGS FOR AUSTRALIA FROM INTERNATIONAL APPROACHES TO SUPPORTING NEURODIVERGENT PEOPLE IN JUSTICE FACILITIES

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To function in a world developed for neurotypical people, those who are neurodivergent sometimes require additional support, modified expectations, or environmental adaptations. While international evidence indicates a high prevalence of neurodivergent people within criminal justice systems, often their needs are not recognised or supported adequately by these systems. Instead, we see the challenges for neurodivergent people exacerbated, given the stressors of criminal justice environments and the lack of awareness or capacity to accommodate individual needs. As the recent Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability has described, there is urgent reform required across Australia to ensure the rights of people with disability are upheld in our criminal justice system. This article utilises learnings from prisons and youth detention centres in the United Kingdom, the United States of America, Canada, and Aotearoa New Zealand to make recommendations for the current Australian criminal justice context.

I	Introduction.....	29
A	Terminology.....	29
B	Background.....	30
II	Australian Context.....	33
III	International Approaches.....	35
	Recommendations.....	39

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A	<i>Short-Term Recommendations</i>	39
B	<i>Medium-Term Recommendations</i>	41
C	<i>Long-Term Recommendations</i>	43
V	<i>Conclusions</i>	44

I INTRODUCTION

People who are neurodivergent face an elevated risk of encountering the justice system compared to those who are neurotypical.¹ With complex legal language, fast-paced decision making processes, abstract concepts, and implicit power dynamics, the criminal justice system can be challenging to navigate.² For those who are neurodivergent, these challenges may be exacerbated, particularly if the appropriate supports and modifications are not put in place.³ Once within the justice system, neurodivergent people may encounter barriers related to accessing support, self-advocacy, following instructions, understanding social expectations, and comprehending behavioural repercussions, potentially leading to recurrent involvement with the system.⁴ Implementing tailored support and accommodations is essential to enhance the accessibility and fairness of the criminal justice system for neurodivergent individuals. This article considers current evidence and international approaches to supporting neurodivergent individuals in justice facilities to produce high-level recommendations for the Australian justice system.

A Terminology

Diverse terminology has been used across disability support services, academic literature, legislation, and clinical practice. It is important to note that people with lived experience of disability, including neurodivergence, are the primary experts regarding appropriate terminology. As such, they will have individual preferences

¹ See generally Rohan Borschmann et al, 'The Health of Adolescents in Detention: A Global Scoping Review' (2020) 5(2) *Lancet Public Health* e114; Mike Hellenbach, Thanos Karatzias and Michael Brown, 'Intellectual Disabilities Among Prisoners: Prevalence and Mental and Physical Health Comorbidities' (2017) 30(2) *Journal of Applied Research in Intellectual Disabilities* 230.

² See generally Natasha Reid et al, 'Fetal Alcohol Spectrum Disorder: The Importance of Assessment, Diagnosis and Support in the Australian Justice Context' (2020) 27(2) *Psychiatry, Psychology and Law* 265.

³ Eileen Baldry et al, 'Reducing Vulnerability to Harm in Adults with Cognitive Disabilities in the Australian Criminal Justice System' (2013) 10(3) *Journal of Policy and Practice in Intellectual Disabilities* 222, 227.

⁴ Reid et al (n 2) 266.

for the terms used to describe themselves, their abilities, and their disabilities. Various terminology is often used for different settings and purposes, such as diagnostic terminology used in medical settings which may not reflect current community preferences or the social model of disability.⁵ Understanding nuanced terminology is essential for creating a more inclusive and accommodating society.

The term neurodiversity describes the natural variation in how human brains develop and function, underlining the fact that no two brains (and therefore no two individuals) are exactly alike. Commonly preferred by lived experience communities, 'neurodivergent' is used to specifically refer to individuals whose brain functions deviate from what is conventionally expected, or 'neurotypical'.⁶ The terms 'neurodisability' and 'neurodevelopmental disorders' have been used within academic literature, and encompass a group of conditions that can be congenital or acquired which result in functional limitations due to impairment of the brain or nervous system.⁷ This includes conditions such as Intellectual Disability, Autism Spectrum Disorder, Fetal Alcohol Spectrum Disorder ('FASD'), Language Disorder, Dyslexia, and Attention Deficit Hyperactivity Disorder ('ADHD'), among others.⁸

B Background

Global evidence indicates a much higher prevalence of neurodisability among justice-involved populations when compared to community-based peers.⁹ Evidence involving adult prison populations has reported prevalence rates of people with cognitive disabilities between 2% and 69%.¹⁰ In the youth justice system, where much of the research to date has focused, more diagnosis specific prevalence rates are available. Language disorder and other communication impairments, for example, have been reported in 60–65% of justice-involved

⁵ See generally People with Disability Australia, *PWDA Language Guide: A Guide to Language About Disability* (Report, August 2021).

⁶ *Ibid* 13.

⁷ See generally Christopher Morris et al, 'Informing the NHS Outcomes Framework: Evaluating Meaningful Health Outcomes for Children with Neurodisability Using Multiple Methods Including Systematic Review, Qualitative Research, Delphi Survey and Consensus Meeting' (2014) 2(15) *Health Services and Delivery Research* 149.

⁸ Nathan Hughes et al, *Nobody Made the Connection: The Prevalence of Neurodisability in Young People Who Offend* (Report, Office of the Children's Commissioner for England, October 2012) 9–11.

⁹ Borschmann et al (n 1) e118; Hellenbach, Karatzias and Brown (n 1) 230–1.

¹⁰ Calum Henderson and Melissa Bull, 'Sentencing and the Over-Representation of People with Cognitive Disability in the Australian Criminal Justice System' (2024) 36(1) *Current Issues in Criminal Justice* 81, 83.

youth, approximately 13 times higher than youth in the community.¹¹ At a rate of approximately 16 times higher than community peers, youth in the justice system have an ADHD prevalence rate of up to 50%.¹² Reported prevalence of FASD ranges from 11–36% of youth within the justice system, approximately 19 times higher than in the general community.¹³ Learning disabilities, traumatic brain injuries, and intellectual disabilities also exhibit significantly elevated rates in justice-involved youth, ranging from three to 16 times higher compared to community rates.¹⁴ Given most justice populations will not have had access to comprehensive assessments of their health and development, these rates are likely underestimated.¹⁵

While these disproportionate rates of disability among people involved in the justice system do not indicate an innate relationship between disability and criminal behaviour, they do reflect the systemic barriers and disadvantages disabled people often experience. Such disadvantages include poverty, family violence or separation, adverse childhood experiences, substance misuse, homelessness, and unemployment.¹⁶ For Indigenous peoples with disability, these disadvantages are often compounded by ongoing colonisation, transgenerational trauma, discrimination, systemic racism and oppression, and a lack of culturally safe support.¹⁷ Frameworks such as the Social Determinants of Health, Cultural Emotional, Social and Wellbeing Models, and more recently the

¹¹ Borschmann et al (n 1) e118.

¹² Ibid; Seena Fazel, Helen Doll and Niklas Långström, 'Mental Disorders Among Adolescents in Juvenile Detention and Correctional Facilities: A Systematic Review and Metaregression Analysis of 25 Surveys' (2008) 47(9) *Journal of the American Academy of Child & Adolescent Psychiatry* 1010, 1015–16; Susan Young et al, 'A Meta-Analysis of the Prevalence of Attention Deficit Hyperactivity Disorder in Incarcerated Populations' (2015) 45(2) *Psychological Medicine* 247, 252.

¹³ Borschmann et al (n 1) e119; Carol Bower et al, 'Fetal Alcohol Spectrum Disorder and Youth Justice: A Prevalence Study Among Young People Sentenced to Detention in Western Australia' (2018) 8(2) *BMJ Open* e019605, 1, 6–7; Svetlana Popova et al, 'Fetal Alcohol Spectrum Disorder Prevalence Estimates in Correctional Systems: A Systematic Literature Review' (2011) 102(5) *Canadian Journal of Public Health* 336, 339.

¹⁴ Borschmann et al (n 1) e118.

¹⁵ See generally Keith McVilly et al, 'Identifying and Responding to Young People with Cognitive Disability and Neurodiversity in Australian and Aotearoa New Zealand Youth Justice Systems' (2023) 30(6) *Psychiatry, Psychology and Law* 789.

¹⁶ Ruth McCausland and Eileen Baldry, 'Who Does Australia Lock Up?: The Social Determinants of Justice' (2023) 12(3) *International Journal for Crime, Justice and Social Democracy* 37, 42–8.

¹⁷ See generally Sophie Russell, James Beaufils and Chris Cunneen, 'Rehabilitation and Beyond in Settler Colonial Australia: Current and Future Directions in Policy and Practice' in Maurice Vanstone and Philip Priestley (eds), *The Palgrave Handbook of Global Rehabilitation in Criminal Justice* (Springer International Publishing, 2022) 33; Chris Cunneen, 'Racism, Discrimination and the Over-Representation of Indigenous People in the Criminal Justice System: Some Conceptual and Explanatory Issues' (2006) 17(3) *Current Issues in Criminal Justice* 329.

Social Determinants of Justice, describe the interaction of such disadvantages and justice involvement, highlighting that justice involvement is almost always an indicator of wider unmet needs.¹⁸

Each stage of justice involvement requires particular cognitive and social skills to navigate it successfully. Typical contact with the criminal justice system initially begins with police contact followed by investigative interviews which require skills involving memory, verbal communication, and narrative discourse.¹⁹ For some neurodivergent people, this poses challenges if they have difficulties recalling events or telling a narrative in chronological order.²⁰ The potential for misinterpretations and miscommunications is significant, and may result in a neurodivergent person appearing as if they are being evasive or lying.²¹ Participating in court proceedings often requires receptive and expressive language skills, self-advocacy, and the ability to process both verbal and written information quickly. Challenges with each of these are common among neurodivergent individuals, potentially impacting their ability to participate fully in their own defence.²² Further, at sentencing an individual is often expected to comprehend cause-and-effect relationships and demonstrate social cognition and empathy. A lack of consequential thinking and the inability to express remorse may have substantial influence on the sentencing outcomes for neurodivergent individuals.²³ Conditions given to individuals, such as community-based orders or directives within custodial environments, also present challenges, relying on memory retention, comprehension of instructions, understanding abstract concepts such as time, and adherence to social rules and expectations.²⁴ Such expectations may be difficult to meet for neurodivergent individuals, inadvertently leading to non-compliance and further justice-involvement.

¹⁸ McCausland and Baldry (n 16) 45; Graham Gee et al, 'Aboriginal and Torres Strait Islander Social and Emotional Wellbeing' in Pat Dudgeon, Helen Milroy and Roz Walker, *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice* (Report, 2014) 57; James Wilson, 'Justice and the Social Determinants of Health: An Overview' (2009) 2(3) *Public Health Ethics* 210, 210.

¹⁹ See generally Linda Hand et al, 'Oral Language and Communication Factors to Consider when Supporting People with FASD Involved with the Legal System' in *Fetal Alcohol Spectrum Disorders in Adults: Ethical and Legal Perspectives: An Overview on FASD for Professionals* (Springer, 2015) 139; Reid et al (n 2).

²⁰ See generally Pamela Rosenthal Rollins, 'Narrative Skills in Young Adults With High-Functioning Autism Spectrum Disorders' (2014) 36(1) *Communication Disorders Quarterly* 21.

²¹ Reid et al (n 2) 267.

²² Pamela Snow, Martine Powell and Dixie Sanger, 'Oral Language Competence, Young Speakers, and the Law' (2012) 43(4) *Language Speech and Hearing Services in Schools* 496, 503.

²³ Baldry et al (n 3) 223; Diane Fast and Julianne Conry, 'Fetal Alcohol Spectrum Disorders and the Criminal Justice System' (2009) 15(3) *Developmental Disabilities Research Reviews* 250, 251.

²⁴ Reid et al (n 2) 268.

II AUSTRALIAN CONTEXT

While there is considerable progress internationally in terms of recognising and responding to neurodiversity within criminal justice settings, until recently there were limited efforts across Australia to provide appropriate accommodations and support. Volume Eight of the 2023 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability described the extensive and repeated failings of Australian justice systems, particularly youth justice systems, to uphold the rights of people with disability.²⁵ Australia has international obligations to take appropriate systemic and administrative approaches to protect the rights of people with disability, the rights of children, the rights of Indigenous peoples, and the rights of those deprived of liberty: obligations which the United Nations has repeatedly identified as not met by Australian criminal justice systems.²⁶ Health care and therapeutic interventions within prisons and youth detention centres vary greatly across Australia, given our health care services are state-based as opposed to federal.²⁷ Primary health care within prisons may be provided by corrective services, the health department, Aboriginal community-controlled health organisations, non-government organisations, private services, or a combination of these services.²⁸ There is limited consistency in screening and assessment processes for neurodiversity, with many neurodivergent people in Australian justice systems remaining undiagnosed or misdiagnosed.²⁹ Disability supports and accessible programs are

²⁵ See generally *Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability* (Final Report, 2 November 2023) vol 8(1) ('*Royal Commission*').

²⁶ See generally *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 1; *Convention of the Rights of Persons with Disabilities*, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008); *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007); *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987); Australian National Preventive Mechanism, *Monitoring Places of Detention Under the Optional Protocol to the Convention Against Torture: Annual Report of the Australian National Preventive Mechanism* (Report, 2023) <<https://www.oics.wa.gov.au/wp-content/uploads/2024/07/Australian-NPM-Annual-Report-2022-23-304534.pdf>>; Janani Muhunthan, Anne-Marie Eades and Stephen Jan, 'UN-Led Universal Periodic Review Highly Critical of Australia's Record on Human Rights and Health for Indigenous Australians' (2016) 1(1) *BMJ Global Health* e000018; Anita Mackay, *Towards Human Rights Compliance in Australian Prisons* (ANU Press, 2020); United Nations, *Youth Justice Systems Across Australia in Crisis: UN Experts* (Media Release, 2025) <<https://www.ohchr.org/en/media-advisories/2025/05/youth-justice-systems-across-australia-crisis-un-experts>>.

²⁷ Craig Cumming et al, 'In Sickness and in Prison: The Case for Removing the Medicare Exclusion for Australian Prisoners' (2018) 26(1) *Journal of Law and Medicine* 140, 140.

²⁸ *Ibid* 150.

²⁹ *McVilly et al* (n 15) 793.

lacking, and significant gaps between evidence and practice exist.³⁰ Further, there is limited evidence for culturally valid screening and assessment processes for Aboriginal and Torres Strait Islander people, and the risk of misdiagnosis is high.³¹ Given the systemic racism well documented in past and present Australian criminal justice processes, there is a critical need for Indigenous people who may be neurodivergent to receive culturally safe health care, including tailored disability support.³²

The limited existing neurodisability prevalence data further highlights significant need for adequate disability support in justice settings across Australia.³³ The Australian Institute of Health and Welfare reports that 39% of people entering Australian prisons have a disability or chronic condition that affects their daily function, compared to 18% of general community members with disability.³⁴ Research in New South Wales prisons reported between 40% to 90% of adults in prisons may have an acquired brain injury.³⁵ In Western Australia, child health researchers (including this author) conducted a FASD prevalence study among youth in detention, in which extensive neurodevelopmental impairments were identified.³⁶ The study involved a multidisciplinary team, including a paediatrician, neuropsychologist, speech and language therapist, and occupational therapist, who comprehensively assessed young people over a two-year period.³⁷ The assessments covered nine different areas of neurodevelopmental function, such as memory, communication, social skills, executive functioning, cognition, motor skills, and academic abilities. In this study, we identified that 36% of the 99 young people assessed had FASD based on the

³⁰ Ibid.

³¹ Ibid; Lorelle Holland, Natasha Reid and Andrew Smirnov, 'Neurodevelopmental Disorders in Youth Justice: A Systematic Review of Screening, Assessment and Interventions' (2021) 19(1) *Journal of Experimental Criminology* 31, 35.

³² Russell, Beaufils and Cunneen (n 17) 44; Simon Pettit et al, 'Holistic Primary Health Care for Aboriginal and Torres Strait Islander Prisoners: Exploring the Role of Aboriginal Community Controlled Health Organisations' (2019) 43(6) *Australian and New Zealand Journal of Public Health* 538, 542.

³³ McVilly et al (n 15) 804; Borschmann et al (n 1) e118.

³⁴ Australian Institute of Health and Welfare, *The Health of People in Australia's Prisons 2022* (Report, Catalogue no PHE 334, 2023) 39.

³⁵ New South Wales State Government Justice Health and Forensic Mental Health Network, *Network*

Patient Health Survey – Aboriginal People's Health Report 2015 (Report, November 2017) 20.

³⁶ Bower et al (n 13) 6.

³⁷ Hayley Passmore et al, 'Study Protocol for Screening and Diagnosis of Fetal Alcohol Spectrum Disorders (FASD) Among Young People Sentenced to Detention in Western Australia' (2016) 6(6) *BMJ open* e012184, 8.

2016 Australian Guide to Diagnosis of FASD.³⁸ This was the highest known prevalence of FASD in a justice setting worldwide. More pertinently, our study found that 89% of the young people had a severe impairment in at least one of the nine areas of neurodevelopment assessed, with 65% severely impaired in three or more areas simultaneously.³⁹ This indicates that the development of these young people deviates significantly from what is expected for their chronological age. Almost all these young people did not have these needs identified prior to the study, potentially impacting their involvement with various systems and services, including education, law enforcement, child protection, community services, and the justice system.⁴⁰

III INTERNATIONAL APPROACHES

Internationally, responses to supporting neurodivergent people in justice facilities are varied. Resourcing, service availability, diagnostic approaches, and cross-agency collaborations within a jurisdiction affect the quality of responses and support provided.⁴¹ While there is no one “best practice” approach, there are many elements of evidence-based and evidence-informed practice occurring internationally which provide scaffolding for what an effective neurodiversity-informed justice system should entail.⁴²

One key element is the meaningful integration of health services within justice facilities. Global evidence indicates that when a person’s health and wellbeing needs are met, their ability to actively participate in and complete rehabilitation and reintegration programs during and after justice-involvement improves.⁴³ Meeting these needs involves comprehensive and routine assessment practices, multidisciplinary teams, sufficient resources, effective information sharing processes, and appropriate caseloads and staff-to-resident ratios.⁴⁴ In the United Kingdom (‘UK’), for example, the National Health Service commissions all health

³⁸ Bower et al (n 13) 6. See generally Carol Bower and Elizabeth Elliott, *Report to the Australian Government Department of Health: “Australian Guide to the Diagnosis of Fetal Alcohol Spectrum Disorder (FASD)”* (Report, 2016).

³⁹ Bower et al (n 13) 5.

⁴⁰ Ibid.

⁴¹ Holland, Reid and Smirnov (n 31) 60–3.

⁴² Reid et al (n 2) 269.

⁴³ Seena Fazel and Jacques Baillargeon, ‘The Health of Prisoners’ (2011) 377(9769) *Lancet* 956, 962; Borschmann et al (n 1) e121.

⁴⁴ See generally Stuart Kinner et al, ‘Low-Intensity Case Management Increases Contact with Primary Care in Recently Released Prisoners: A Single-Blinded, Multisite, Randomised Controlled Trial’ (2016) 70(7) *Journal of Epidemiology & Community Health* 683; Katherine McLeod et al, ‘Global Prison Health Care Governance and Health Equity: A Critical Lack of Evidence’ (2020) 110(3) *American Journal of Public Health* 303.

care services within prisons, typically involving a primary health care team for physical needs working alongside mental health and wellbeing care teams.⁴⁵ In many prisons, youth offending institutions, and secure care facilities, these care teams involve allied health professionals such as psychologists, speech and language pathologists, and occupational therapists. Case coordination and management teams are also involved, and are key to supporting individuals to navigate their health and wellbeing support.⁴⁶ Facilities with appropriate staffing have the greatest opportunity to progress not only clinical assessment and intervention, but also involve health professionals in delivering therapeutic programs, educating operational staff in appropriate practices, and providing psychoeducation to neurodivergent people about their functionality.⁴⁷ However, given that there are no national minimum health care commissioning requirements, there is limited consistency in the resourcing of health teams across UK prisons.⁴⁸ Such diversities also exist in most other countries, including Australia, where responses vary within each state and territory.⁴⁹ Both the UK and Aotearoa New Zealand have made considerable efforts to incorporate the expertise of speech and language pathologists into justice settings, with intermediaries and communication assistants involved in police interviews and court proceedings in these jurisdictions.⁵⁰ The role of these professionals is to provide impartial communication support for either a defendant, witness, or victim, to ensure those with a language disorder or other communication challenges are able to fully participate in and access justice processes.⁵¹ While intermediary services are growing in Australia, there have been discrepancies across jurisdictions, and limited availability of these services for defendants.⁵²

Internationally, there are challenges with using consistent, evidence-based approaches to the identification of neurodivergent people, and the sharing of

⁴⁵ See generally Roger Watson, Anne Stimpson and Tony Hostick, 'Prison Health Care: A Review of the Literature' (2004) 41(2) *International Journal of Nursing Studies* 119; United Kingdom Ministry of Justice, *A Response to Criminal Justice Joint Inspection: Neurodiversity in the Criminal Justice System, A Review of Evidence* (Neurodiversity Action Plan, 2022).

⁴⁶ Kinner et al (n 44) 685.

⁴⁷ Megan Georgiou and Jemini Jethwa, 'Planning Effective Mental Healthcare in Prisons: Findings from a National Consultation on the Care Programme Approach in Prisons' (2021) 77 *Journal of Forensic and Legal Medicine* 102105, 102107.

⁴⁸ Watson, Stimpson and Hostick (n 45) 121.

⁴⁹ See generally Cumming et al (n 27); McLeod et al (n 44).

⁵⁰ See generally Aine Kearns et al, 'Perspectives on the Role of the Intermediary in the Justice System: A Systematic Review and Qualitative Synthesis' (2025) 29(3) *International Journal of Evidence & Proof* 163.

⁵¹ *Ibid.*

⁵² See generally Jacqueline Giuffrida and Anita Mackay, 'Extending Witness Intermediary Schemes to Vulnerable Adult Defendants' (2021) 33(4) *Current Issues in Criminal Justice* 498.

information across agencies and services.⁵³ Prisons and youth detention centres, even within one jurisdiction, often use varied and sometimes unvalidated tools, leading to unreliable identification of needs. While some jurisdictions are working to develop more comprehensive screening processes, such as Aotearoa New Zealand progressing administration of culturally safe and holistic screening tools, there are significant evidence gaps globally.⁵⁴ It is crucial that assessment tools align with both the specific population and the purpose for which they are used, and that results are interpreted accordingly.

Staff training in neurodiversity, cultural safety, and trauma-informed approaches is critical to foster safe and inclusive justice environments for neurodivergent populations.⁵⁵ This training should be routine, evidence-informed, and regularly updated. Evidence indicates that communication styles emphasising active listening, concrete and explicit instructions, and respectful engagement can lead to improvements in wellbeing for both staff and residents.⁵⁶ When individuals are actively involved in decisions about their daily routines, behavioural management plans, throughcare or reintegration plans, and disability support plans, their autonomy and engagement can improve substantially.⁵⁷ The UK has made progress by introducing Neurodiversity Support Managers in all prisons to coordinate support strategies, provide psychoeducation and advocacy services, improve neurodiversity awareness among operational staff, deliver staff training, and develop tailored visual communication tools.⁵⁸ A more targeted initiative in Canada, the Manitoba FASD program, involves a team of experts trained in FASD

⁵³ Borschmann et al (n 1) e121; Hellenbach, Karatzias and Brown (n 1) 237.

⁵⁴ Borschmann et al (n 1) e122; Hellenbach, Karatzias and Brown (n 1) 237; McVilly et al (n 15) 799. See generally Mark Henaghan and Jean Choi, 'Promising Steps in Aotearoa New Zealand Criminal Law to Recognise Neurodiversity' in Hannah Wishart and Ray Arthur (eds), *International Perspectives of Neuroscience in the Youth Justice Courtroom* (Routledge, 2025) 55.

⁵⁵ Hayley Passmore et al, 'Reframe the Behaviour: Evaluation of a Training Intervention to Increase Capacity in Managing Detained Youth with Fetal Alcohol Spectrum Disorder and Neurodevelopmental Impairments' (2021) 28(3) *Psychiatry, Psychology and Law* 382, 383; Hayley Passmore et al, 'Fetal Alcohol Spectrum Disorder (FASD): Knowledge, Attitudes, Experiences and Practices of the Western Australian Youth Custodial Workforce' (2018) 59 *International Journal of Law and Psychiatry* 44, 50.

⁵⁶ Deborah Denton and Linda Grenade, 'Connecting with Clients: Building Therapeutic Alliances with People Who are Incarcerated' (2022) 10(1) *Psychotherapy and Counselling Journal of Australia* 1; Davinia Rizzo, Belinda Davey and Melanie Irons, 'Interpersonal Interaction Between Prisoners and Officers in Prisons: A Qualitative Meta-Synthesis Exploring Prison Officer Wellbeing' (2021) 10(1) *Journal of Qualitative Criminal Justice & Criminology* 1.

⁵⁷ McVilly et al (n 15) 790.

⁵⁸ See generally United Kingdom Ministry of Justice (n 45); United Kingdom Ministry of Justice, 'Greater Support for Neurodivergent Offenders in Bid to Cut Crime' (Press Release, 16 May 2024) <<https://www.gov.uk/government/news/greater-support-for-neurodivergent-offenders-in-bid-to-cut-crime>>.

who provide psychoeducation to youth and adults in custody, upskill other service providers in FASD knowledge and practice, provide referrals for further assessment, diagnosis, and intervention, and work with the specialist FASD court to provide individualised neurodevelopmental profiles and tailored support recommendations.⁵⁹ Psychoeducation for both diagnosed and undiagnosed neurodivergent people is critical to empower individuals to understand their cognitive strengths, difficulties, and opportunities for support and self-advocacy.⁶⁰

Appropriately supporting people in justice facilities also requires intentional environmental design and infrastructure conducive to therapeutic responses. For neurodivergent people, small, purpose-built facilities with higher staff-to-resident ratios often provide more opportunity for meaningful engagement and support compared to larger, more traditional prison facilities.⁶¹ Currently, many facilities are unsuitable for and not conducive to therapeutic or trauma-informed approaches, with rehabilitation and educational programs often facilitated in overstimulating and chaotic environments.⁶² While some jurisdictions, such as the UK and the United States of America, have begun incorporating sensory considerations into new prison designs (such as providing specialised sensory rooms where a resident can self-regulate or decompress in an environment where they have choices regarding lighting, sounds, and furniture textures) there remains a significant gap in modifying existing facilities to reduce environmental barriers.⁶³

⁵⁹ See generally Sally Longstaffe et al, 'The Manitoba Youth Justice Program: Empowering and supporting Youth with FASD in Conflict with the Law' (2018) 96(2) *Biochemistry and Cell Biology* 260.

⁶⁰ See generally Lauren Amy Powell et al, 'Psychoeducation Intervention Effectiveness to Improve Social Skills in Young People with ADHD: A Meta-Analysis' (2022) 26(3) *Journal of Attention Disorders* 340; Louise Buchan and Tom McMillan, 'Prisoner Knowledge About Head Injury is Improved by Brief Psychoeducation' (2022) 36(3) *Brain Injury* 401.

⁶¹ Elizabeth Grant, 'Ravenhall Correctional Centre: The Master Planning and Architectural Design of a Multifaceted, People-Oriented Prison for Men with Complex Physical and Mental Health Needs in Victoria, Australia' (2020) 9(1) *Advancing Corrections* 146, 153.

⁶² See generally Caitlin Gormley, 'The Hidden Harms of Prison Life for People with Learning Disabilities' (2022) 62(2) *British Journal of Criminology* 261.

⁶³ See generally Gisele Craswell, Crystal Dieleman and Parisa Ghanouni, 'An Integrative Review of Sensory Approaches in Adult Inpatient Mental Health: Implications for Occupational Therapy in Prison-Based Mental Health Services' (2021) 37(2) *Occupational Therapy in Mental Health* 130.

IV RECOMMENDATIONS

Immediate change is needed across Australian criminal justice facilities to ensure people who are neurodivergent have their needs identified and responded to.⁶⁴ This is essential to facilitate equitable access to justice, support, health care, and rehabilitation opportunities for people in all justice settings. Simultaneously, we need comprehensive mechanisms to support neurodivergent people in the community and prevent justice involvement at the outset.

To this end, this article offers a series of short, medium, and long-term recommendations to better support neurodivergent people in justice facilities. The following discussion does not order the recommendations by priority or importance, as all matters raised require a sense of urgency. Instead the recommendations are ordered by feasibility, which is likely to be persuasive to the agencies and decision makers involved. However, these high-level recommendations are also relevant to all who work within the justice sector, regardless of decision-making power. This includes frontline staff, service providers, government agencies, politicians, researchers, advocates and funders. These recommendations are made in addition to, and hopefully in alignment with, recommendations from people with lived experience who are the experts in these matters, as well as their families and communities. Given that common Western approaches to criminal justice and penalty can be fundamentally flawed and rooted in discrimination, it is challenging to develop recommendations for a system that needs complete reform.⁶⁵ However, in the absence of that reform, there must still be meaningful and immediate action taken.

A *Short-Term Recommendations*

Firstly, meaningful investment into Indigenous-led and bicultural approaches to disability support are required. Australia's colonial legacy continues to permeate justice institutions, and substantial reform is needed to ensure culturally safe services are implemented in both health and justice responses.⁶⁶ This must be achieved through respectful consultation and partnership with Aboriginal and Torres Strait Islander communities and Aboriginal community-controlled health organisations, empowering culturally informed practices which reflect the values, knowledge, self-determination, and needs of the populations involved.⁶⁷ For example, adequate resourcing could support Aboriginal community-controlled

⁶⁴ See generally *Royal Commission* (n 25).

⁶⁵ McCausland and Baldry (n 16) 40.

⁶⁶ Cunneen (n 17) 334.

⁶⁷ Russell, Beaufils and Cunneen (n 17) 45.

health organisations or Aboriginal Medical Services to provide services within prisons and other community justice settings. These services might include conducting health and wellbeing assessments, providing disability support workers, and facilitating therapeutic services based on Indigenous knowledge and healing practices. Bicultural practices have become common within the mental health system in Aotearoa New Zealand, with service providers now commonly recognising Indigenous and Western approaches as parallel and equal.⁶⁸ If simplified, biculturalism in this context can be described as both a goal and a process, with elements including consultation with Māori elders, the hiring of cultural practitioners, challenging systemic racism, cultural competency training, and the adoption of Māori mental health knowledge and practice.⁶⁹

Immediate priorities also include ensuring that operational staff such as police and prison officers receive routine, evidence-based training about neurodiversity, trauma-informed practices, cultural safety, and mental health. Workforce knowledge is critical to fostering inclusive interactions and avoiding exacerbation of vulnerabilities, and is needed to create a system-wide emphasis on basic and humane engagement practices, such as active listening and respectful communication.⁷⁰ While this type of training exists and is delivered to these workforces already, it is often not available frequently and routinely to all staff; typically occurs only at induction or orientation; often excludes some types of disability (such as FASD); and focuses on increasing knowledge but not the practical application or skill development required by frontline justice staff.⁷¹ In Western Australia, a novel neurodisability training program was developed and evaluated in consultation with the youth justice system, following reports from this workforce that they had received limited disability training and did not feel prepared to support young people with FASD.⁷² The training involved workshops in which short videos filmed inside the Western Australian youth detention centre were viewed and peer-to-peer skill sharing was encouraged. This program was deemed experiential, practical, and meaningful by participants.⁷³

⁶⁸ See generally Lorien Jordan et al, “‘Hopefully You’ve Landed the Waka on the Shore’: Negotiated Spaces in New Zealand’s Bicultural Mental Health System’ (2024) 61(3) *Transcultural Psychiatry* 473.

⁶⁹ See generally *ibid.*

⁷⁰ Passmore et al, ‘Reframe the Behaviour: Evaluation of a Training Intervention to Increase Capacity in Managing Detained Youth with Fetal Alcohol Spectrum Disorder and Neurodevelopmental Impairments’ (n 55) 401.

⁷¹ *Ibid* 384.

⁷² *Ibid.*

⁷³ *Ibid.*

In addition, the development and deployment of visual communication tools such as instructional storyboards and easy-read guides would provide further opportunity for comprehension and engagement for individuals with communication challenges.⁷⁴ Australia does have some visual tools in use, such as Legal Aid WA's Blurred Borders cards. These are a set of cards depicting elements of the legal system using art and storytelling, with the aim of making legal processes more accessible for culturally and linguistically diverse people.⁷⁵ There are also other tailored tools used in some Australian youth detention centres, such as visual daily schedules, but there is scope to expand upon this to ensure visual tools are available more frequently, tailored to the needs of the individual and environment, developed with adequate allied health or education expertise, and extended into adult prisons too.

Another key early intervention is the promotion of psychoeducation. Equipping neurodivergent individuals with an understanding of their own strengths and challenges can build self-advocacy skills and improve rehabilitative outcomes.⁷⁶ Furthermore, justice environments must begin adopting more collaborative and person-centred decision-making processes.⁷⁷ In practice, this would mean involving residents in decisions about their daily routines, behavioural management practices (such as tailored rewards and consequences), and throughcare or reintegration planning. This not only promotes autonomy but may also reduce tension and conflict between operational staff and people in prison, particularly if sensory triggers or needs are identified and addressed in the process.⁷⁸

B Medium-Term Recommendations

The allocation of more allied health professionals, including speech pathologists and occupational therapists, within all justice settings is essential to ensure neurodivergent individuals are properly identified, supported, and

⁷⁴ See generally Kelly Howard, Clare McCann and Margaret Dudley, "It's Really Good... Why Hasn't it Happened Earlier?" Professionals' Perspectives on the Benefits of Communication Assistance in the New Zealand Youth Justice System' (2020) 53(2) *Australian & New Zealand Journal of Criminology* 265; Kelly Howard, Clare McCann and Margaret Dudley, "It was like More Easier": Rangatahi (Young People) and their Whānau (Family) Talk About Communication Assistance in the New Zealand Youth Justice System' (2021) 21(2) *Youth Justice* 210.

⁷⁵ See generally Legal Aid WA, *Blurred Borders* (Web Page) <<https://blurredborders.legalaid.wa.gov.au>>.

⁷⁶ See generally Powell et al (n 60); Buchan and McMillan (n 60).

⁷⁷ McVilly et al (n 15) 790.

⁷⁸ Ibid 800.

accommodated.⁷⁹ Similarly, increased efforts to provide comprehensive case coordination within justice facilities to help individuals navigate the complex interface between justice, health, and social systems are required.⁸⁰ In practice, this would involve a consistent case management role with appropriate resourcing and caseloads; effective inter-agency collaboration with clearly defined responsibilities for each agency; information sharing mechanisms to avoid duplication of efforts; a combining of agency resources where appropriate; and meaningful assessment and monitoring of an individual's outcomes.⁸¹ Additionally, improving staff-to-resident ratios, particularly in therapeutic and health care roles, is likely to enhance responsiveness, reduce system strain, and improve safety for staff and residents.⁸² Evidence from smaller, purpose-built facilities demonstrates that higher staffing levels enable more individualised and effective care.⁸³

Australia must invest in comprehensive data capture systems and information-sharing protocols for agencies working with neurodivergent people in the justice system. The current fragmentation of systems across corrective services, health, and community supports undermines coordinated care and creates additional barriers for the individual navigating such systems.⁸⁴ Integrated data infrastructure would enhance service delivery, track outcomes, and inform systemic improvements.⁸⁵ While confidentiality is key for individuals in the justice system, particularly regarding sensitive medical and legal information, there are mechanisms by which an individual's engagement or communication needs can be shared with consent to create a meaningful circle of care.

⁷⁹ See generally Penelope Abbott et al, 'Supporting Continuity of Care Between Prison and the Community for Women in Prison: A Medical Record Review' (2016) 41(3) *Australian Health Review* 268; Monique Hooper, Claudia Virdun and Jane L Phillips, 'Capacity-Building Strategies that Support Correctional and Justice Health Professionals to Provide Best-Evidenced Based Healthcare for People in Prison: A Systematic Review' (2025) 24(1) *International Journal for Equity in Health* 115; Gabrielle Wolf and Mirko Bagaric, 'Addressing a Human Rights Crisis: Health Care for Prisoners in Australia' (2024) 31(2) *Journal of Law & Medicine* 42.

⁸⁰ Kinner et al (n 44) 685.

⁸¹ Tazeen Majeed et al, 'A Better Future Beyond the Walls: Narrative Review of Best Practice Components of Services and Programs for People Exiting Custody' (2025) 52(10) *Criminal Justice and Behavior* 1489, 1500.

⁸² Barbara Zaitzow and Anthony Willis, 'Behind the Wall of Indifference: Prisoner Voices about the Realities of Prison Health Care' (2021) 10(1) *Laws* 11, 17.

⁸³ See generally Grant (n 61).

⁸⁴ Cumming et al (n 27) 156.

⁸⁵ Hooper, Virdun and Phillips (n 79) 131–3.

C Long-Term Recommendations

Long-term reform cannot occur without first addressing the broader systemic and social determinants that contribute to neurodivergent individuals becoming involved in the justice system in the first place.⁸⁶ Comprehensive and progressive systemic reforms aligned with Indigenous-led initiatives and evidence-based approaches, shown to reduce crime and recidivism, are urgently required.⁸⁷ This includes meeting obligations under international treaties such as the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as national recommendations, such as those from the Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability.⁸⁸ Punitively designed facilities based on outdated prison design knowledge should not be used to house neurodivergent people (or any people, for that matter). In cases where facilities are needed to protect communities and individuals from harm to themselves or others, they should be used as a last resort, with a move towards small, purpose-built facilities close to the communities where people are from. These environments enable more tailored and humane support, foster connections to family and local services, and enhance opportunities for successful reintegration.⁸⁹ Such facilities are better suited to accommodating the needs of neurodivergent residents and relieving pressure on larger institutions.

Central to this reform is the early identification of neurodisability, ideally during childhood through routine health and educational assessments.⁹⁰ Proactive, culturally safe screening processes must be developed and implemented broadly to ensure early support. Linked to this is the implementation of early therapeutic interventions, designed to address developmental, social, and emotional needs before justice involvement occurs. This preventative focus is key to reducing justice system contact for neurodivergent individuals.

⁸⁶ McCausland and Baldry (n 16) 40.

⁸⁷ See generally Mateja Vuk et al, 'The Pragmatic Public? The Impact of Practical Concerns on Support for Punitive and Rehabilitative Prison Policies' (2020) 45(2) *American Journal of Criminal Justice* 273; Russell, Beaufils and Cunneen (n 17) 45.

⁸⁸ See generally *Royal Commission* (n 25); *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, GA Res 57/199, UN GAOR, 57th sess, Agenda Item 109(a), UN Doc A/RES/57/199 (9 January 2003).

⁸⁹ See generally Muhammad Asad, 'The Effectiveness of Different Criminal Justice Systems: Examining Punitive and Rehabilitative Approaches' (2023) 1(2) *Policy Research Journal* 5.

⁹⁰ Holland, Reid and Smirnov (n 31) 62.

V CONCLUSIONS

Evidence from across Australia and internationally repeatedly identifies the importance of acknowledging and addressing the needs of neurodivergent people within justice facilities, and outlines processes for developing more inclusive and effective practices.⁹¹ The learnings drawn from international jurisdictions demonstrate that meaningful change is achievable when systems are designed to consider neurodiversity, such as through early identification, tailored support utilising allied health skills, psychoeducation regardless of diagnosis, staff training, and the creation of environments that reduce harm and promote rehabilitation. These examples provide insight into evidence-informed practices that could be adapted for the Australian context.

Ensuring equity in criminal justice responses is not only about accommodating difference, but about dismantling systemic barriers that perpetuate marginalisation.⁹² Australia's criminal justice responses must move beyond rhetorical commitments to disability inclusion and implement structural reforms that reflect the realities experienced by neurodivergent individuals.⁹³ Urgent, coordinated action is required to ensure the rights of neurodivergent people are upheld in the Australian criminal justice system, and to ensure that they are not further disadvantaged or harmed by systems ill-equipped to meet their needs. Deliberate, systemic reform informed by lived experience, Indigenous knowledge, and both domestic and international evidence must underpin the future of Australia's justice system to ensure it is equitable, inclusive, and responsive to neurodivergent people.

⁹¹ Ibid 36.

⁹² McCausland and Baldry (n 16) 40.

⁹³ See generally *Royal Commission* (n 25).