

Feedback on Disability Access and Inclusion Plan

Department of Justice

15 November 2023



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1. Preamble

Consumers of Mental Health WA wishes to give feedback to assist in the development of the 2023-2028 Disability Access and Inclusion Plan (DAIP) for the Department of Justice in Western Australia. People who have lived experience of significant mental health issues and/or psychosocial disability are inordinately impacted by discrimination and stigma when using Department of Justice services. Our members regularly report negative experiences in numerous areas of the Department including the Public Trustee, Prisons, and Courts and Tribunals where they do not receive sufficient support to have their voices heard and their rights protected.

Consumers of Mental Health WA's feedback is based on and informed by the following:

- Ongoing consultation with consumers in Western Australia on joint priorities for an improved mental health system
- Consumer representation in relevant settings, including but not limited to: Primary Health networks (WAPHA), WA regional equivalents of the Local Health Networks (regional mental health services under the WA Health Board structure), the Mental Health Commission and the health complaints agency, Health and Disability Services Complaints Office (HaDSCO)
- A survey sent out to all Consumers of Mental Health WA members which was open for responses between 20/10/23 and 15/11/23

2. Introduction

Consumers of Mental Health WA's key concern over the current (2018-2023) Disability Access and Inclusion Plan for the Department of Justice is that the document is brief, overly generalised, and contains limited information on either the actual lived experience of people with a disability who use or attend Department of Justice services and events. Moreover, details of how the plan is to be implemented and how this connects with its proposed outcomes are noticeably absent from the DAIP. Finally, every outcome listed in the 2018-2023 DAIP is given an 'ongoing' timeline for enactment, which obfuscates any clarity around what has been, and what will be, done by the department, when it was commenced, and when/how it will be completed and evaluated. In solidarity with the extremely passionate responses we received from our members about their experiences dealing with the WA Justice System, Consumers of Mental Health WA strongly urge the Department of Justice to ensure that the mechanisms of the DAIP are designed to be transparent and have outcomes suitable for clear evaluation.

Overall, Consumers of Mental Health WA argues that the Department's DAIP should be a more comprehensive document that demonstrates nuanced understanding of the issues and barriers people with disability face in the Department. It is Consumers of Mental Health WA's view that the DAIP should acknowledge how people with certain disabilities experience specific barriers in the Justice System, such as people with psychosocial disability, as well as cognitive and intellectual disability. We encourage the Department to align their DAIP with that of the Department of Communities, which not only illuminates the context of people living with disability in WA, but gives more granular detail in how the plan aims to act to achieve its proposed outcomes. In the Department of Communities DAIP, the Outcomes are defined and elaborated on in ways that help the reader understand how these outcomes will be achieved and what an achieved outcome looks like; we recommend the Department of Justice act similarly to eliminate any ambiguity or vagueness in what access means to the Department, and to demonstrate a commitment to not only make sure that people with disabilities can physically use or access

Department services and events, but that they are respected, free from stigma and discrimination and have support to have their voices heard by the Department.

In the following sections, the fragments of the submitted experiences of Consumers of Mental Health WA members will be reproduced to offer support for five recommendations that we believe would strengthen the DAIP and ensure access for people with an experience of psychosocial disability.

3. Overlap of Justice and Mental Health – Co-Determinants

The challenge of navigating the Justice System can be overwhelming, and even more so when a person is concurrently experiencing mental health challenges. To ensure that people with psychosocial disability are not dissuaded from pursuing their rights in the Justice System, the challenging intersection of mental health and the circumstances requiring access to Department of Justice services should be kept in mind as *co-determinants*: Engaging with the Justice System may have been caused by mental health distress, as much as mental health distress can be caused by the stress of navigating the Justice System alone or for another person. Given the profound impact these determinants can have on each other, Consumers of Mental Health WA argues that the Department of Justice should ensure that their DAIP contains a straightforward recognition of the frequency and impact that psychosocial disability, specifically, can have when accessing the Justice System.

Beyond the challenges consumers may face in the wide array of public facing services of the Justice System, it is also worth noting the large overlap of mental health challenges for those West Australians who are or have been incarcerated. A significant percentage of Western Australian Prisoners have an experience of mental health struggles—the 2022 statistics from the Australian Institute of Health and Welfare reveal that 40% of Australia’s prisoners reported that they have been previously been diagnosed with a mental illness at some stage of their lives.¹ Another 2018 report compiled by the Office of the Inspector of Custodial Services states that ‘Half of the 7,000 people in prison in Western Australia have some level of mental health disorder’² Given the inordinate prevalence of people experiencing mental health distress in WA’s prisons, there is a clear rationale to explicitly name and account for psychosocial disability in the Department of Justice DAIP.

It is, at this stage, important to clarify that Consumers of Mental Health WA is of course *not* suggesting that people experiencing psychosocial disability should receive preferential treatment within the legal determinations of the Justice System, but rather that provisions are needed to ensure that psychosocial disability does not inhibit people from engaging with the Justice System and receiving equitable treatment. Simply put, regular channels and processes should be made *accessible* for people experiencing psychosocial disability, with specific references to the challenges that can be experienced for these people when engaging with the standard mechanisms of the Justice System. As one of our members noted when summarising their experiences with the Department:

¹Australian Institute of Health and Welfare. (2022) *Health of Prisoners*. Accessed 07/11/23:

<https://www.aihw.gov.au/reports/australias-health/health-of-prisoners>

²OICS (2018) *Prisoner access to secure mental health treatment*. Perth: Office of the Inspector of Custodial Services.

<https://www.oics.wa.gov.au/wp-content/uploads/2018/11/Prisoners-access-to-mental-health-treatment.pdf>

'[Engaging with the Department of Justice] feels confusing, people need continuity, extra support, and follow up support to better engage.'

For other members, their overview of how they were treated when accessing the Justice System simply underscored the profound frustration that had characterised the process:

'[I was] Hugely exasperated at the whole situation. I got no voice, no justice, just the same thing: biased judgement and injustice.'

'I have literally gone through years of injustices and bias treatment. Bullying, harassment... My lived experiences are extensive.'

The recommendations made by Consumers of Mental Health WA have been motivated in their scope through the passionate responses we received from members surveyed. In light of both the intensity and consistency with which these responses underscored a systemic problem in the Department of Justice's approach to disability, we have made every effort to present an expansive account of their concerns and how these connect to the need for a more comprehensive DAIP that includes granularity around psychosocial disability. As part of our mission to elevate the voices of people with a lived experience of mental health, we have used the experiences shared with us by members to highlight problems and gesture towards possible solutions.

Recommendation 1: The Department of Justice should amend the DAIP to explicitly recognise the psychosocial disability in the document, in recognition of distinct challenges people with psychosocial disability can face when accessing their services.

4. The Challenge of Being Heard – Accessing Justice through the challenges of Psychosocial Disability

This section deals with the specific challenges that can be faced by people with a psychosocial disability when engaged with services managed by the Department of Justice, and is intended to demonstrate the need to make provisions for people experiencing psychosocial disability to access the Justice System. Before continuing, it is worth noting that there are many varieties of psychosocial disability, and even within these demarcations the manifestation of a person's mental health distress can vary dramatically. However, there are some commonly experienced challenges that could be addressed to minimise the potential impact psychosocial disability can have on accessing the Justice System.

As an example of some of the unique challenges consumers can face when trying to access the Department of Justice, consider the barriers the following member outlines in relation to written requirements:

'I am better with verbal communication but everything is expected to be in written form. People with working memory issues need prompting ... this is a massive barrier, particularly worse due to impacts of stress or trauma causing cognitive shut down.'

The difficulty of navigating written requirements was also mirrored by another member, this time in relation to the process of making a complaint to the Department of Justice:

'I am too overwhelmed to make a complaint and it is expected to be in written form. My biggest barrier is written expression.'

The impact of mental health challenges upon memory were a frequent touchstone for members who had experiences trying to access Department of Justice services. As this member describes, there was simply no accommodation made for the impact that psychosocial disability and trauma can have on the act of having to recall information in formal settings:

'I don't do well when asked to recall things in chronological order because I have multiple past traumas so my brain scrambles the sensory data and blocks the memories to reduce the trauma impact. I need more time than other people to put the pieces together and make a statement. It isn't needing time to make up a story, it is time to recall what happened.'

The impact of psychosocial disability on people trying to engage with the Justice System can also lead to rash and inappropriate judgements about consumers, whose mental health challenges can be mischaracterised. The following member, for example, recounts how their psychosocial disability led to them being mischaracterised:

'I have a freeze/dissociative trauma response which, when triggered, is mistaken for being uncooperative, uncaring and/or unkind - dissociation is far more common than the justice system wants to believe.'

The processes of services within the Department of Justice also reveals a disconnect between their policies and the latest evidence of best practice from health services with regard to the humane treatment of people with psychosocial disability.³ This disconnect is especially stark in relation to ensuring that there is a trauma-informed understanding of how to appropriately engage with consumers:

'I am traumatised and fearful of re-experiencing the traumatic experience of being in the court room, and having the magistrate yell loudly at me because I asked him to repeat himself, explained I had auditory processing issues. The yelling made it more difficult for me to hear and engage. The magistrate's Behaviour made it difficult for me to engage and caused me to shut down and not able to give my evidence because I had become too overwhelmed.'

In light of the unique challenges that consumers can face when placed in high pressure situations within the Justice System, the mechanisms for complaints can also pose stark challenges for people living with psychosocial disability. As the member above later clarified, the requirements for lodging complaints in person led them to avoid engaging altogether:

'I want to lodge a complaint about the behaviour of the magistrate and the general accessibility issues. There should be more option than attending in person.'

³ Australian Commission on Safety and Quality in Healthcare. (2018) 'NSQHS Standards User Guide for Health Services Providing Care for People with Mental Health Issues' p. 44 https://www.safetyandquality.gov.au/sites/default/files/2019-05/nsqhs-standards-user-guide-for-health-services-providing-care-for-people-with-mental-health-issues_0.pdf

Moreover, one consumer described their experience of the environment in which their engagement had to take place, noting that the archaic format of courtrooms deliberately manifests and exacerbates the power imbalances inherent to the court appearances. This can be particularly impactful for consumers who have been traumatised, such as through the involuntary admission mechanisms of the mental health system:

'Some hearings could just happen in a regular room. The whole experience of a magistrate sitting levels above, in a large echoing room adds to feelings of being below the person talking to you and creates a feeling of power imbalance which is triggering for people with disabilities or mental health issues. Surely a magistrate sitting on the same level in a smaller conference room would not change how the magistrate makes decisions.'

Beyond the examples above of barriers consumers have experienced in the high-pressure environment of the courtroom, difficulties in access can persist even in accessing supports in the community. For example this CoMHWA member told us of their experience of difficulties in engaging with the Justice System as a victim of crime, noting that the process is:

'Not [straightforward or accessible] in terms of victim supports - I had trouble accessing support in the community and didn't think that was right.'

The experiences accounted above provide a mere snapshot of the challenges that many people living with psychosocial disability face when accessing services and events within the Department of Justice. While the proposed DAIP does try to codify that disability should not impact service accessibility, without a specific acknowledgement of the unique challenges that can occur through psychosocial disability, vulnerable consumers will continue to languish and hope that their experiences are interpreted charitably through the current DAIP's overly general framework of disability.

Recommendation 2: The DAIP should be amended to provide broad information to ensure Department of Justice staff can accommodate for the effects of psychosocial disability on service accessibility (e.g. Sensory issues, impacts of trauma, time requirements for recollection etc).

5. Ensuring access and inclusion around the intersection of First Nations Peoples and Psychosocial Disability

In addition to defining and exploring psychosocial disability and the experiences of mental health consumers in the Department of Justice, we argue that the DAIP ought to recognise the unique challenges faced by some intersectional identities, that is, where other sources of oppression (such as racism, colonisation, sexism, homophobia, transphobia) impact the lives of people with disability. It is well-documented, for example, that Aboriginal and Torres Strait Islander people with disability face further stigma, discrimination, and systemic inequity than non-Aboriginal people with disability; these intersections must be named and accounted for to create equitable access. The DAIP could begin to acknowledge this by aligning with and supporting reports such as The National Agreement on Closing the Gap. While the Department of Justice acknowledges publicly that there is an overrepresentation of Aboriginal and Torres Strait Islander people in the Justice system, more needs

to be done to recognise the further entrenched stigma and disadvantage that Aboriginal and Torres Strait Islander people with disability experience.

The compounded effects of enduring systematic racism alongside the stigma of mental illness will invariably affect the experience of accessing the Justice System as well as the practical outcomes of said engagement. Without developing policies such as the DAIP to accommodate access for particularly vulnerable people often subject to discrimination, a sense of futility can emerge about the value of participating in the Justice System at all. This sense of hopelessness was captured by the response we received from a First Nations member about their experience of barriers when accessing the Justice System:

'No one understands...how it impacts us. [I have experienced barriers] many times. No one understood or supported me.'

This experience led to an attempt to make a complaint about the experience accessing the Department of Justice, which they note was not followed up upon and led to a fatalistic view of the value of pursuing justice through our institutions:

'I never got any response from them... No one replied. I'm nothing to them.'

This tragic lack of trust with the Department of Justice is not only an example of the systemic injustice Aboriginal and Torres Strait Islander peoples so often face engaging with the Justice System, but it also points to the corrosion of trust with respect to institutions whose purpose is to ensure vulnerable West Australians are protected.

Recommendation 3: The DAIP should make special provisions to ensure that Aboriginal and Torres Strait Islander people experiencing psychosocial disability are provided with culturally appropriate help to access Department of Justice Services.

6. The importance of adopting a rights-based approach – Stigma and Discrimination

The objectives and activities described in the current DAIP convey an understanding of accessibility as having 'equal access to services', but have little understanding of access from a human rights perspective that values autonomy, dignity of risk and freedom from stigma and discrimination. The current DAIP claims to align itself with legislation including the United Nations Convention for the Rights of Persons with Disabilities (UN CPRD), but does not refer to, or embody, parts or principles of this or any other referenced legislation. Principles of supported decision-making, for example, are a key part of the UN CRPD that are not mentioned or accounted for in the current DAIP. For example, supported decision making is a crucial contemporary element of accessibility that acknowledges the needs of people with disabilities and their legal right to be involved in decisions made about their lives.

Beyond protecting the autonomy of people with disabilities, addressing psychosocial disability in the DAIP has the potential to transform the very contours of how people experience the Justice System. For example, the stigma of mental illness can influence whether people are believed, or allowed to give evidence, utilising

generalised and reductive assumptions about mental health despite the variability of how mental illness can be experienced. One Consumers of Mental Health WA member felt this stigma denied them justice:

'I was told I was 'unreliable', I could not be given the opportunity to be given a voice in court. Because I was MENTALLY ILL, I was unreliable.'

Other members surveyed responded to the question asking about experiences of stigma by referring to the challenges they faced providing various kinds of documentation to the Department of Justice, a process in which they felt staff did not appreciate the difficulties their disability posed:

'Talk to people with lived experience with disability and treat them like people. Stop making people with disabilities have to get further documentation [without support] ... These things should already be accepted and all staff should be well trained in understanding differences.'

Finally, the responses from our members included confronting examples of stigma and discrimination they have faced in court proceedings, which are especially difficult circumstances for many people living with psychosocial disability. One member noted the impact that their non-verbal reaction to an assault had, leading to a mistaken charge which escalated to the level of criminal proceedings:

'I was once charged with assault when I was the victim of the assault - but I fought back. I was unable to give a verbal statement as I dissociated and was non-verbal so I was charged. It went all the way to court before the Judge said it was self defense and also provocation and told prosecutor and police he thought wrong person was charged.'

Another member felt that their testimony was completely dismissed based on their history of sexual assault and characterisation of their mental health:

'Barriers are not being believed ... One lawyer simply said to the judge "she was sexually abused in childhood" shrugged his shoulders to imply the altercation was my fault and I couldn't get a restraining order ... and I had broken finger, offender admitted unlawfully entering my house - how does that work?'

The frustrations expressed by members above represent examples of how the stigma about mental health, and the discrimination this stigma begets, can transform an already challenging encounter with Department of Justice services into a demoralising nightmare. While there may well be legitimate institutional or legal reasons underpinning the unfortunate accounts provided above, without staff trained to relay this information clearly and safely, people experiencing psychosocial disability invariably will lose faith with a system that does not listen to their needs or explain processes and outcomes in everyday, jargon-free language. The goal should be to avoid, at all costs, the demoralisation of people and their disengagement from the justice system, a sad outcome that was evinced by a member explaining why they did not make a complaint about their experience of discrimination:

'I've wanted to - but what's the point?'

Recommendation 4: The DAIP should include a requirement for Department of Justice staff to receive mandatory education specifically about psychosocial disability, particularly the impact that this can have on service access.

7. Addressing Access amidst Complexity: Peer Support for Navigating, Understanding and Giving Feedback to the Justice System

It is the view of Consumers of Mental Health WA that the various services within the Department of Justice should be augmented through the employment of peer workers, that is, people with a lived experience of mental health challenges and the Justice System, in order to assist people living with psychosocial disability to access the Justice System. Peer workers would be well-suited to help people experiencing psychosocial disability with service navigation, and with training would be well suited to help to interpret the sometimes-labyrinthine requirements to access services in the Justice System. As a part of this recommendation, Consumers of Mental Health WA suggest that the success peer workers have had in the mental health space,⁴ has the potential to be translated to assist with challenges faced by people experiencing psychosocial disabilities when engaging with the Justice System.

The importance of providing better options to help people with psychosocial disability navigate the services offered by the Department of Justice is underscored by the many responses that members provided us about the complexity of access requirements. While the Justice System is of course designed to maintain rigorous documentation and processes, without assistance many people with psychosocial disability will not be able to access the services all West Australians have a right to. Examples of responses that highlighted the difficulty in procuring and understanding documentation requirements include the following concise summation from a member:

“[There was] too much detailed information required, the form was off-putting.”

Others noted that their experience was consistently confusing, a problem compounded by memory issues stemming from psychosocial disability:

‘Not being able to understand the processes, working memory issues and following up without support, the processes are overwhelming.’

As these responses from members make clear, there is a clear challenge for many people experiencing psychosocial disability in navigating and accessing Department of Justice services. However, beyond outlining the challenges they faced, some of our members were united in what they perceived to be a possible solution to current arrangements:

‘Make sure jobs are available for people with disabilities - not just token ones - but peer type jobs; so people can be made available to assist with consumer access/complaints’

⁴ White, S., Foster, R., Marks, J. et al. (2020) The effectiveness of one-to-one peer support in mental health services: a systematic review and meta-analysis. BMC Psychiatry 20, 534. <https://doi.org/10.1186/s12888-020-02923-3>

It is worth noting that the above respondent identified peer work roles in their suggestion. The expertise used by peer workers is founded on their lived experience of mental health distress, and in this proposed instance, their lived experience of navigating the Justice System. This expertise, in turn, promotes a person-focused understanding of those people experiencing psychosocial disability mindful of the impact of trauma, as well as the ability to translate institutional jargon and requirements when offering service navigation. The desire to have support staff employed by the Department of Justice was echoed in relation to helping with the complaints process explicitly, which was seen as too complicated to be accessible:

‘Simplify the complaints process ... Make support people available for consumers to deal with lawyers, courts - NOT volunteers like Court support, but paid positions ... put other things in place.’

Without a concerted effort to provision staff that are professionally employed to facilitate service navigation and other access requirements, people with psychosocial disability will continue to fall through gaps of the mechanisms used by the broad array of services managed by the Department of Justice. Ideally, it is the position of Consumers of Mental Health WA, and our members, that these roles should include lived experience expertise in the form of peer workers to maximise the benefit of this service to some of our community’s most vulnerable people.

Recommendation 5: The Department of Justice should, as soon as possible, take the required steps to request resources to employ peer workers to help people experiencing psychosocial disability to access and navigate the Department’s services.

8. Summary and Recommendations

In conclusion, it is the position of Consumers of Mental Health WA that the proposed DAIP put forward by the Department of Justice has, in its present form, an unfortunate lack of detail about the profound impact psychosocial disability can have on service access. In order to demonstrate the pressing need for such specificity in this document, we have utilised the voices and experiences of our members to reveal how frustrated, ignored and stigmatised so many people with psychosocial disability feel in relation to their experiences with Justice System to date. However, these systemic issues can, we propose, be addressed without restructuring the Department of Justice and associated services from the ground up—The inclusion of psychosocial disability in the DAIP in conjunction with a comprehensive requirement for staff training about how psychosocial disability can appear and effect access would provide an excellent start. Beyond recognition and education, Consumers of Mental Health WA echo the call from our members for a dedicated service of peer workers to facilitate service navigation for people experiencing psychosocial disability. Without a concerted effort to account for and address how psychosocial disability impacts service access in the Justice System, we as a community will continue to let some of the most vulnerable West Australians unjustly fall through the cracks.

- **Recommendation 1: The Department of Justice should amend the DAIP to explicitly recognise the psychosocial disability in the document, in recognition of distinct challenges people with psychosocial disability can face when accessing their services.**

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- **Recommendation 2:** The DAIP should be amended to provide broad information to ensure Department of Justice staff can accommodate for the effects of psychosocial disability on service accessibility (e.g. Sensory issues, impacts of trauma, time requirements for recollection etc).
 - **Recommendation 3:** The DAIP should make special provision to ensure that Aboriginal and Torres Strait Islander people experiencing psychosocial disability are provided with culturally appropriate help to access Department of Justice Services.
 - **Recommendation 4:** The DAIP should include a requirement for Department of Justice staff to receive mandatory education specifically about psychosocial disability, particularly the impact that this can have on service access.
 - **Recommendation 5:** The Department of Justice should, as soon as possible, take the required steps to request resources to employ peer workers to help people experiencing psychosocial disability to access and navigate the Department's services.



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