

Submission to
The Department of Social Services on the
New Disability Employment Services from 2018
Discussion Paper

A Future Beyond the Wall:
Improving Post-release Employment Outcomes for People Leaving Prison
ARC Linkage Project: LP140100329

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¹ The authors of this submission are researchers from the Future Beyond the Wall ARC Linkage project. The project is being undertaken with assistance of project partners: NSW Corrective Services, ACT Corrective Services, Australasian Correctional Education Association, Australian Community Support Organisation, Break Thru People Solutions, WISE Employment.

For more information on the project, visit our website:

<https://socialsciences.arts.unsw.edu.au/research/research-initiatives/a-future-beyond-the-wall/>

Dear Department of Social Services,

The 'Future Beyond the Wall' research team welcomes the opportunity to provide a written submission to the Department's *Disability Employment Services from 2018 Discussion Paper*. This submission is informed by the authors' extensive experience in, and current research about the employment pathways for a group of people with disability whose employment needs remain significantly neglected: people with mental and cognitive disabilities who are involved with the criminal justice system.

The 'Future Beyond the Wall' project has, as its principal focus, the identification of ways to improve the employment pathways of ex-prisoners. In Australia there is a lack of empirical research in this area. Our project will address that absence by identifying effective elements, strategies, and program and policy directions in offender employment. A significant component of the project involves an exploration of the experiences of ex-prisoners who are seeking employment, the experiences of staff of employment agencies who work with ex-prisoners, and the models of practice being used by a range of agencies. An additional focus of the project is the identification of specific issues, program approaches and outcomes for a group disproportionately represented in the criminal justice system: people with mental and cognitive disabilities.

In various sections of this submission we draw on contemporary research and secondary analysis of issues experienced by people with mental and cognitive disabilities who are involved with the criminal justice system. We also draw on interview material from the 'Future Beyond the Wall' project. Interview material included in this paper is taken from the project's recent interviews with two key groups: 1) ex-prisoners with mental and cognitive disabilities who are clients of employment services; and 2) staff involved in the delivery of employment services for ex-prisoners with mental and cognitive disabilities. In addition, we draw on interview material from interviews conducted with staff involved in Corrective Services New South Wales' Statewide Disability Services, a service providing targeted programs for incarcerated people with intellectual disabilities.

Yours sincerely

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Summary

The New Disability Employment Services (DES) from 2018 can play an essential role in supporting people with disability who are involved in the criminal justice system. People released from prison have one of the highest unemployment rates of any group in Australia and ex-prisoners with disability are the most disadvantaged group. There is international evidence to suggest that long term stable employment assists to reduce recidivism. Our research indicates a number of essential changes that need to occur to existing DES to achieve this aim.

This submission provides a brief overview of the characteristics of the target group: people with mental and cognitive disabilities who are involved in the criminal justice system. This is followed by a discussion of the key barriers to employment faced by this group. A response to the proposed reforms outlined in the Discussion Paper of critical relevance to the target group is then provided. These are:

- **Improved gateway and assessment process:** Our research indicates a need for Centrelink to ensure that 'ex-offender' status is included in the jobseeker level characteristics on the Employment Services System software that DES provider's use because this group requires particular specialist support due to a wide range of disadvantages and discriminations that accompany most people released from prison. In addition, it is critical that the process of engaging prisoner's pre-release, to assess their eligibility for the New DES, starts early. The continuation of the Pre-release Prisoner (PRP) initiative is critical to achieving this aim.
- **Driving greater competition and contestability in DES:** The additional support needs of ex-prisoners with disabilities requires that the existing allocation of generalist and specialist contracts are further differentiated by longer pre-determined program timeframes or stages for specialist contracts and increased payment levels. Our interviews indicate that this would be 'an investment' to ensure that providers are adequately resourced and rewarded to support the most disadvantaged of clients.
- **Aligning incentives to support better outcomes:** Our research makes clear the need to value quality service provision as a feature of program/ contract performance. A funding formula that rewards milestone completion of pre-employment support activity and social outcomes may strike the right balance between achieving employment outcomes, and quality of services and stakeholder satisfaction.

- **Improving Participant Choice and Control:** There is growing evidence that for particularly vulnerable clients like ex-prisoners with cognitive disabilities it is crucial that adequate consideration is given to establishing appropriate protections against providers who may act opportunistically and use inducements to encourage clients to switch providers.

People with mental and cognitive disabilities in the criminal justice system

Prisoner populations across all States and Territories are growing rapidly at a rate far higher than the natural population increase. The majority of full time prisoners spend less than 12 months in prison and the recidivism rate for this flow population is around 50%, meaning that there is a rapid turnover. The number being released over a year is around 60-70,000 (sadly this number is not calculated by the ABS but has been calculated by academics) and around half of all these releasees have disability.² The representation of people with mental and cognitive disabilities in the Australian criminal justice system is disproportionately high. For example, the rate of mental disorders in prisons is approximately triple the rate in the general population³. In Victoria, 40% of the prison population identify as having mental health disorders, a rate more than twice that which is reported in the general community⁴. From available data it is also clear that people with cognitive disabilities are overrepresented in prisons across Australia. In a recent Victorian study it was estimated that 42 per cent of incarcerated males and 33 per cent of incarcerated females demonstrated evidence of an acquired brain injury, compared to just 2 per cent in the Australian population⁵. In New South Wales, people with mental and cognitive disabilities are 3 to 9 times more likely to be in prison than the general NSW population⁶.

The over-representation of people with disabilities in the criminal justice system is not indicative of a simple relationship between disability and offending⁷. Rather as research in the field has

² Baldry E 2014 'Disability at the Margins: the limits of the law', Griffith Law Review Vol 23 (3):370-388

³ NSW Law Reform Commission (2012) *People with cognitive and mental health impairments in the criminal justice system*, Report no. 135.

⁴ Victorian Ombudsman's Report (2015) *Investigation into the rehabilitation and reintegration of prisoners in Victoria*, October 2015.

⁵ Department of Justice (2011) *Acquired Brain Injury in the Victorian Prison System*, Corrections Victoria Research Paper Series, Paper no. 04.

⁶ McCausland R, Baldry E, Johnson, S & Cohen, A (2013) *People with mental health disorders and cognitive impairment in the criminal justice system: Cost-benefit analysis of early support and diversion*. PricewaterhouseCoopers and University of New South Wales.

⁷ NSW Law Reform Commission (2012) *People with cognitive and mental health impairments in the criminal justice system*, Report no. 135.

established, this group is subject to criminalisation and the vast majority of people with mental and cognitive disabilities who come into contact with the criminal justice system experience multiple and intense forms of disadvantage, including: mental illness, having more than one form of disability, homelessness, substance abuse, poverty, ill health and violence⁸. Indigenous Australians are disproportionately represented in this group⁹. These individuals have 'complex support needs'. It is now well recognised that these complex needs originate not from an individual, but rather from the systemic failure of services to appropriately support people with cognitive disability who experience intense social disadvantage¹⁰. At the present time, there remains a serious under-recognition of the specialised support needs - including the employment support needs - of people with complex needs who are involved in the criminal justice system¹¹. In the absence of appropriate support, these individuals are criminalised and cycle in and out of the criminal justice system more rapidly and more frequently compared to those without disabilities¹². Research in the field has established that robust, holistic support and intervention for people with mental health and cognitive disabilities would reduce the significant economic and human costs associated with this group's high rates of re-offending¹³. It is well established that stable employment, as one of the most cited correlates of desistance from crime¹⁴, is critical to reducing the disproportionately high recidivism rates of people with mental and cognitive disabilities.

⁸ Baldry E & Dowse L (2013) 'Compounding mental and cognitive disability and disadvantage: Police as care managers', In D Chappell (ed), *Policing and the Mentally Ill: International Perspectives*, CRC Press.

⁹ Baldry E, McCausland R, Dowse L, McEntyre E (2015) *A predictable and preventable path: Aboriginal people with mental and cognitive disabilities in the criminal justice system*, Sydney: UNSW.

¹⁰ Cunneen C, Baldry E, Brown D, Brown M, Schwartz M & Steel M (2013) *Penal culture and hyperincarceration: The revival of the prison*, Surrey: Ashgate.

¹¹ Baldry E, Dowse, L & Clarence M. (2012). *People with Mental and Cognitive Disabilities: Pathways into Prison*, Background paper for Outlaws to Inclusion Conference. Sydney: UNSW.

¹² Baldry E, Dowse L, Clarence M (2012) *People with intellectual and other disability in the criminal justice system*, Sydney: UNSW.

¹³ McCausland R, Baldry E, Johnson, S & Cohen, A (2013) *People with mental health disorders and cognitive impairment in the criminal justice system: Cost-benefit analysis of early support and diversion*, PricewaterhouseCoopers and University of New South Wales.

¹⁴ Farrall S (2004) Social capital and offender reintegration: making probation desistance focused, In S Maruna & R Immarigeon (eds), *After crime and punishment: Pathways to offender reintegration*, Devon: Willan.

Key barriers to employment

The *Disability Employment Services from 2018 Discussion Paper* provides an excellent description of the barriers to employment for people with disability. It is crucial that adequate consideration is also given to the additional barriers faced by people with mental and cognitive disability who have been involved with the criminal justice system. Prisoners with mental and cognitive disabilities seeking employment post-release face a multiplicity of barriers additional to the barriers faced by people with disability in the general community. Barriers identified throughout the project's interviews include: the stigma associated with having a criminal history; low levels of education; poor employment histories and lengthy periods of unemployment; insecure housing and homelessness; low levels of computer literacy; a lack of social skills necessary for seeking employment; high rates of drug and alcohol problems; community and employer prejudice; lack of personal identification records (e.g. driver's license, birth certificates); and lack of supportive relationships. Interview material from our recent interviews illuminates the significance of the barriers faced by ex-prisoners with mental and cognitive disabilities who are seeking employment.

As the manager of one employment service working with ex-prisoners with disabilities stated:

“Ex-prisoners have everything – every other type of barrier that anyone else does, plus some ... the biggest one is that employers and the community don't fully appreciate and understand that not everybody that's been in prison is a really bad person, that's the biggest issue that they have”.

The stigma associated with having a criminal history was also identified by most ex-prisoners as one of the most significant barriers to employment:

“As far as getting a job, as soon as you say you've been in jail, there's an automatic, I don't know, a stigma attached to it ... You can feel the change of the manner of the people. All of a sudden it's like, he was a hopeful, but now he's not”.

The vast majority of ex-prisoners with mental and cognitive disabilities have had limited educational opportunities, and most experience poor functional literacy, which presents a

significant barrier to gaining paid employment¹⁵. A staff member of an employment service explained:

“In my four years of working with ex-prisoners with disabilities, literacy and numeracy is a huge barrier to employment ... doesn’t matter what culture they’re from, there’s an embarrassment. They’re ashamed to actually say they can’t read. We have a signup form and I can see straight away. It can take some guys two minutes to write their first and last name. And that’s probably one of the biggest issues I find, one of the biggest challenges”.

Issues related to insecure housing also present a significant barrier to employment for this group. As another staff member of an employment service succinctly stated:

“Without a house, you can’t find a job”.

Improved gateway and assessment process

The DES Discussion Paper outlines the need for improvements to existing gateway arrangements and assessment processes to ensure that people with disability can readily access employment assistance and that employment assistance is correctly targeted. Changes to existing DES access and assessment processes are critical to addressing the persistent neglect of the employment assistance needs of people with mental and cognitive disabilities who are involved with the criminal justice system. In particular, our research indicates a need for Centrelink to ensure that the ‘ex-offender’ status is included in the jobseeker level characteristics on the Employment Services System software that DES provider’s use. In addition, it is critical that the process of engaging prisoners pre-release to assess their eligibility for the New DES, must start early. To assist in achieving this aim, it is strongly advised that the Pre-release Prisoner (PRP) initiative continues to be provided under the New DES. Best practice in post-release support has, for the last two decades consistently stressed the importance of through-care, a coherent linked plan and process addressing barriers and needs from the day the prisoner enters the prison to well after they leave, as a central feature in pre-release planning. That is, pre-release planning should occur while the

¹⁵ Select Committee on the Increase in Prisoner Population (2001) Final Report, Sydney: NSW Legislative Council.

person is in prison. Through-care is crucial to preventing reoffending¹⁶, as well as improving community integration and ultimately enhancing community safety¹⁷

When asked if any pre-release employment assistance was provided, the vast majority of ex-prisoners with disabilities reported receiving no employment assistance at all. As one ex-prisoner states:

“They just let me out the gates, gave me my pay, and that was it”

The importance of engaging prisoners with disability pre-release emerged from interviews with senior staff of Corrective Services New South Wales Statewide Disability Services:

“For a while we tried to set something up in terms of a link to employment using Centrelink and whatever, but that just ... fell over. What we were trying to do is get that link directly into a job network provider. But then that becomes really contentious because you’re not supposed to just pick one job network. That’s a choice for the offender. So ... we weren’t able to setup [an] official link into employment as they leave. That is one of the weaknesses [of the prison disability program] ... that we weren’t able to setup an official link into employment as they leave. Not having that direct link into an employment opportunity like a DES is a real weakness”.

Our research also revealed concerns about the accuracy of the Job Seeker Classification Instrument (JSCI), and incorrect allocation of support. Ex-prisoners with a disability tend not to be well categorised through JSCI and it is common that they are allocated to the lowest DES funding level. Staff from employment services reported that:

“The Disability Management Services (DMS) contracts and ex-offenders don’t really work together. So what we’re talking about with DMS is people that only need support – and I use only with bunny ears – for two years or under. Realistically 100% of our ex-offenders need support for more than two years to stay in a job”.

¹⁶ Baldry E (2007) Recidivism and the role of social factors post-release, *Precedent*, 81: 4-7.

¹⁷ Borzycki M & Baldry E (2003) Promoting integration: The provision of prisoner post-release services, *Trends & Issues in Crime and Criminal Justice*, no. 262, Canberra: AIC.

“...Disability Management Service (DMS) isn’t the right contract if you’re going to have ex-offenders in a contract as it is now, DMS isn’t the right one. Because out of the 40 people that we’ve had registered with us – as an ex-offender I think if we’re being really truly honest we could’ve had them all reclassified as needing to be in Employment Support Service (ESS), because their disability, injury or health condition would be more than two years. It’d be ongoing - mental health doesn’t go away in two years, and drug and alcohol [issues] don’t go away. So 100% of our people are affected either with drug and alcohol or mental health and they’ve had a classification that within two years they’ll be right. They don’t want to tell people that they can’t work because they want to work”.

Driving greater competition and contestability in DES

The DES Discussion Paper notes that the proposed DES reforms intend to continue the availability of specialist services. Our research indicates that the existing allocation of generalist and specialist contracts could be further differentiated by longer pre-determined program timeframes or stages for specialist contracts and increased payment levels. This would better reflect the well-established degree of difficulty and ‘risk’ associated with assisting ex-prisoners with disabilities to seek employment. Our interviews indicate that this would be ‘an investment’ to ensure that providers are adequately resourced and rewarded to support the hardest to help, and most significantly disadvantaged of clients.

The importance of providing a specialised form of DES to ex-prisoners with a disability emerged from our interviews with staff involved in the delivery of DES programs to ex-prisoners:

“They [ex-prisoners] are just another number [to a mainstream employment service]. They don’t understand [the issues faced by ex-prisoners]. They’ll get treated like anybody else, they’ll get PR reported – whatever you want to call it, as another number. With us we actually understand the bigger picture of what they’re going through”.

This staff member also noted the need for adequate resources for working with this group:

“What we do really well is we engage people with all their services. Unfortunately we don’t get rewarded for that”.

Another staff member reported the need for a national and consistent approach to DES programs for ex-prisoners with a disability:

“Unfortunately I don’t think ex-offender programs fit in DES, and they don’t fit in job active. They actually fit on their own and that’s part of the biggest problem that we have. There really should be a national approach to the one program for every ex-prisoner with disability. In my opinion, in the first two years upon release, this group needs to go into a specialised ex-offender program. If, after the first two years of being in that program they’re still not working, then they can go into a mainstream employment program”.

Aligning incentives to support better outcomes

The DES Discussion Paper confirms the need to better align incentives to support improved outcomes. Our research makes clear the need to value quality service provision as a feature of program/ contract performance. The current system (outcomes based payment schemes using payment by results) is likely to place pressure for immediate job placements which can result in under-servicing, lack of thorough assessment and forgoing work preparation activities required to achieve a job that is suitable, sustainable and desired by ex-prisoners with disabilities, the vast majority of whom require additional support. A funding formula that rewards milestone completion of pre-employment support activity and social outcomes may strike the right balance between achieving employment outcomes, and quality of services and stakeholder satisfaction.

The importance of valuing quality service provision emerged from our interviews with ex-prisoners with disabilities. As one respondent stated:

“I like [____]. I’ll come in and I’ll see her, and usually I don’t get along with people straight away, but I’ll come in, and she’s always asking me how I’m going and how me mum is and all this because she was in the hospital not long ago...She actually

asks about how everything's going and how my meds are going and stuff like that. That really helps to actually have someone that cares..."

The additional support needs for ex-prisoners with disabilities seeking employment also emerged throughout our interviews with ex-prisoners and staff. One ex-prisoner explained the importance of gaining assistance from employment staff to connect with employers:

"Do the initial connecting with employers and pave the way. They can warn the employer, I guess, before I show up...then, if I get past that stage, well, then that's great".

Another clarified the importance of accessing ongoing support after gaining employment:

"Having a place like this [employment service] as back up, you know, like if I'm doing something wrong I can ask them if they can help me through that, that's the best thing, very important. Backup, follow through".

Staff members of employment agencies also stressed the need for greater recognition of the additional support needs of ex-prisoners with disabilities. One staff member commented on the importance of assisting clients who have exited prison with other matters that will increase their chances of finding employment:

" We help re-establish relationships with their families and friends, we help them feel socially included and we do that because without that happening employment isn't realistic. So if they don't have strong relationships or they're not socially included, work just won't last".

The same respondent noted the importance of providing practical assistance for this group:

"I've had quite a few boys who have never actually had a resume written for them before. You hand them over to them and you see a little bit of a light goes on in their eyes. It's like – wow, someone actually does give a shit".

Improving Participant Choice and Control

The Discussion Paper comments on options being considered to develop a more participant-directed service delivery for DES. For instance, it is proposed that a client may leave a DES provider at any time. There is growing evidence that for particularly vulnerable clients, such as ex-prisoners with cognitive disabilities, it is crucial that adequate consideration is given to establishing appropriate protections against providers who may act opportunistically and use inducements to encourage clients to switch providers.¹⁸

Conclusion

It is clear that the New Disability Employment Services (DES) from 2018 can play an essential role in supporting people with disability who are involved in the criminal justice system. Consideration of the above recommendations will be an important step in achieving that aim. The members of the 'A Future Beyond the Wall' project welcome the opportunity to discuss the submission or any other issues related to improving the employment pathways for people with disability in the criminal justice system.

¹⁸ With the introduction of the NDIS, product enticements have been used by a number of disability service providers to entice ex-prisoners with cognitive disabilities to switch providers. The Community Restorative Centre documents evidence of these concerns in a forthcoming Briefing Paper, 'Access to the NDIS for people with cognitive disability who are in contact with the criminal justice system: Key challenges'.