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Informed debate vital for disability justice

Mentally impaired people can't simply be treated as criminals, say **Taryn Harvey** and **Andrew Jefferson**

For over a decade disability, mental health and legal advocates have been calling for law reform to end indefinite imprisonment of people deemed to be “mentally impaired” due to intellectual or cognitive disability, or serious mental illness.

People's stories have been shared in these pages in an effort to put a human face to this issue and some context to their offences, but largely they are an unacknowledged, misunderstood and extremely vulnerable group.

Last week, the State Government introduced legislation to address this injustice by establishing disability justice centres. It comes no less than 17 years after amendments to the Criminal Law (Mentally Impaired Accused) Act (1996) allowed for the establishment of “declared places” for this purpose.

We commend the Government for taking this action, and for their commitment to pursuing a community-based service delivery approach.

Prison is never an appropriate facility for people who have been deemed unfit to plead due to mental impairment. Imprisoning people who are unfit to plead fundamentally contradicts the basic principle of a person's right to a fair trial. What greater injustice could there be than people who are unfit to plead ending up spending longer in prison than if they had pleaded guilty and been convicted?

The current situation is harmful to the individuals themselves and counterproductive to successfully rehabilitating them. People with intellectual or cognitive disability are incredibly vulnerable in prison, and custodial workers don't have the skills and experience needed to support them effectively.

The nature of the prison environment and lack of effective support can contribute to a deterioration in their mental health and the development of challenging behaviours which again custodial workers are not skilled in responding to.

These settings contradict what we know works when supporting people with intellectual or cognitive disability to live successful lives in their communities — including for those who have complex learning needs and histories of criminal offending.

While establishing the centres as a specific and identifiable place where mentally impaired accused will be supported is new, the service delivery models, knowledge, techniques and risk management that the centres will draw on are not. Supporting people with intellectual and cognitive disability who have offended isn't novel or untested. There is considerable evidence and experience locally, nationally, and internationally of successful community-based approaches.

What's different is that for the first time there is a very public attention and focus on this issue. There is no doubt that there have been flaws in community engagement processes and communication about how the sites were identified, assessed and final choices made.

It is equally clear that there is a critical lack of understanding about what intellectual or cognitive disability is; what happens to people with these disabilities in our justice

system; who would be eligible to receive treatment in the disability justice centres; and how would any risk to the people and the community be managed.

An example of this lack of understanding was when a member of the community called out in Parliament in June that convicted murderer Dante Arthurs might be housed in one of the centres. As the minister correctly pointed out, Arthurs would never be placed in a disability justice centre because he has pleaded and been convicted of a crime. Examples like these only add to confusion and misunderstanding about the centres, and we need to make sure that the conversation is as informed as possible.

Only a person deemed unfit to plead following an independent assessment will be considered for being housed in the centres. And of those, only those who are considered by the Mental Impaired Accused Review Board as being appropriate would be placed there. The board makes it very clear that it places any potential risk to community safety as its top priority in making these decisions.

Disability justice centres are custodial environments but they are not urban prisons. They are staffed, secure, residential environments that allow people to receive the education, supported learning and skill development that will allow them to lead safer, more productive lives. They are based in community settings because this is the most effective approach.

We call on the State Government to develop a planning framework that recognises that community-based services are essential and also provides community confidence in how decisions are made.

Taryn Harvey is chief executive of the Developmental Disability Council of WA. Andrew Jefferson is executive director of People with Disabilities WA