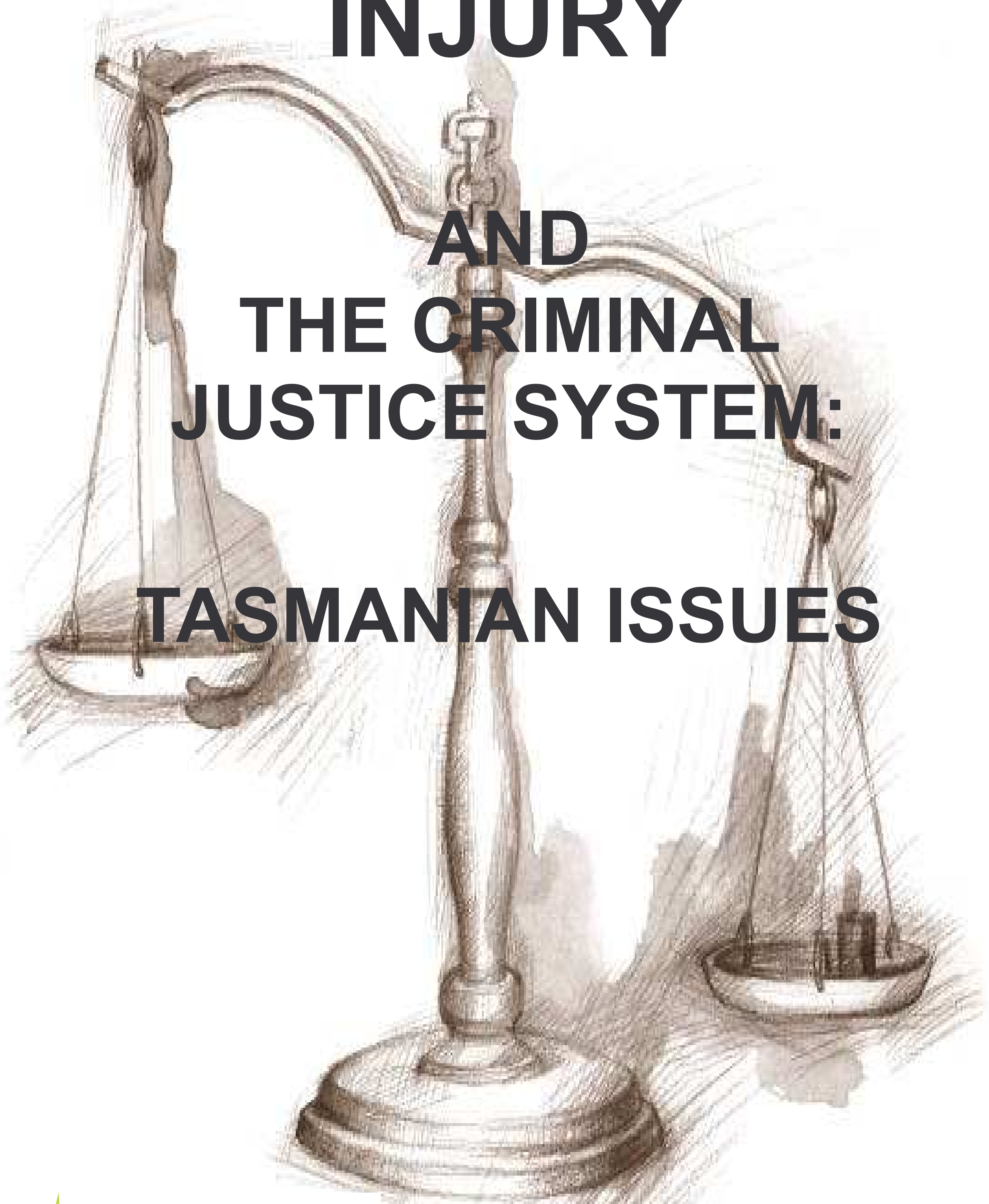
ACQUIRED BRAIN INJURY



AND THE CRIMINAL JUSTICE SYSTEM:

TASMANIAN ISSUES

bia Braininjury
Association of Tasmania

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DEFINITIONS

"disability" , in relation to a person, means:

(a) total or partial loss of the person's bodily or mental functions; or

(b) total or partial loss of a part of the body; or

(c) the presence in the body of organisms causing disease or illness; or

(d) the presence in the body of organisms capable of causing disease or illness; or

(e) the malfunction, malformation or disfigurement of a part of the person's body; or

(f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or

(g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;

and includes a disability that:

(h) presently exists; or

(i) previously existed but no longer exists; or

(j) may exist in the future; or

(k) is imputed to a person.

(Commonwealth Disability Discrimination Act 1992)

An acquired brain injury (ABI) is defined nationally as:

'…injury to the brain that results in deterioration of cognitive, physical, emotional or independent functions. It can occur as a result of trauma, hypoxia, infection, substance abuse, degenerative neurological disease or stroke. These impairments to cognitive abilities, sensory or physical functioning can be either temporary or permanent and cause partial or total disability or psycho social maladjustment' (Acquired Brain Injury Strategic Plan, DHS, 2001:2-3. Cited in Oliver & O'Brien)

Traumatic Brain Injury (TBI)

TBI is defined as an insult to the brain, not of degenerative or congenital nature, caused by an external physical force that may produce a diminished or altered state of consciousness, which results in an impairment of cognitive abilities or physical functioning. It can also result in the disturbance of behavioural or emotional functioning. TBI is the leading cause of death and disability in children and young adults. Shaken Baby Syndrome is a form of TBI. (Brain Injury Association of Texas – www.biatx.org)

Brain Injury vs. Head Injury

Head injury is a general term indicating damage to any part of the head, including the skin covering the skull, face or jaw, or the brain itself. Brain injury is a more specific term indicating damage to brain cells, causing temporary or permanent interruption of their functioning. (Brain Injury Association of Texas – www.biatx.org)

A Cognitive Disability

'The category of cognitive disabilities includes a range of disorders relating to mental process of knowing, including awareness, attention, memory, perception, reasoning and judgement. Cognitive disabilities include intellectual disabilities, learning difficulties, acquired brain injury, fetal alcohol syndrome, dementia, neurological disorders and autism spectrum disorders'. (Human Rights and Equal Opportunity Commission 2005)

Note: Traumatic brain injury is different from intellectual disability and psychiatric illness. Intellectual disabilities are congenital disabilities a person is born with, whereas TBI is acquired at a later stage of life, prior to which the brain functioned normally. Psychiatric illness is due to a patient's brain malfunctioning, possibly due to chemical imbalances. It is not caused by traumatic head injury, and is not the result of physical damage to the brain. People with an ABI do not necessarily experience a decline in their overall level of general intellectual functioning; rather they are more likely to experience significant cognitive changes that lead to limitations in their ability to perceive, recognise, understand, interpret, and/or respond to information.

For the purposes of this paper when reference is made to 'cognitive disability' or 'disability', ABI had been noted under this umbrella in some research papers. Caution was used in selecting and referencing appropriate sources that were referring to ABI under this broad definition. They are however, deemed relevant within the context of this paper.

BACKGROUND TO THE ISSUES PAPER

The Brain Injury Association of Tasmania (BIAT) is an organisation committed to advocacy, lobbying and support for people living with acquired brain injury. BIAT also conduct community education programs for the awareness and prevention of acquired brain injury (ABI).

Of the many issues highlighted in BIAT's Final Community Consultation Issues Paper April 2006 '*Acquired Brain Injury – Issues…? Solutions…?',* ABI and the criminal justice system were highlighted as warranting further investigation. As noted in the above issues paper *"The majority of issues raised in relation to this subject at the community consultations related to the need for increased education and awareness of brain injury in the criminal justice services of Tasmania" p25.*

Some people with ABI are at greater risk of entering the criminal justice system due to the effects of trauma to the brain after sustaining a brain injury. They may experience life-long changes to their behaviour and personality, physical and sensory abilities, or thinking and learning. The risk can be further heightened due to a range of other factors including: an increased risk of onset of mental health issues, inadequate or nonexistent support and care co-ordination, loss of income and poverty at times resulting in homelessness, decrease in social networks and loss of education and employment opportunities.

As noted in the Brain Injury Association of Queensland (BIA QLD) paper 2005, "Acquired brain injury is often called the invisible disability. As there are frequently no outward physical signs of disability, effects such as fatigue, lack of initiation, anger, mood swings and egocentricity, may be seen simply as personality defects by family members, government policy makers and health professionals. As their disability may not be visible, and therefore not detected or recognised, they will be at risk of increased marginalisation, and be placed at unnecessary risk of homelessness and the criminal justice system".

This paper will examine issues in both juveniles with ABI as well as adults with ABI in the Tasmanian criminal justice system. It is difficult and indeed an injustice to ignore this significant issue, particularly since it incurs such a great cost both in economic and social terms in our community, let alone the huge personal costs endured by people with ABI and their families.

The paper is broad in its scope and therefore intensive focus cannot be given to any particular issue. The paper will provide an overview of the many issues related to people with ABI in the criminal justice system and provide a brief statistical overview of these cohorts while considering data limitations.

Comparative analyses have been drawn from national and international research as there appears to be no evidence based Tasmanian research to draw upon, or at least any research that is easily located.

In general terms of ABI rather than specific to the criminal justice system, BIAT estimate there are in excess of 2,500 Tasmanians acquiring an ABI, across all severities, each year. The actual numbers of Tasmanians who have sustained an ABI is much higher, because many people with acquired brain injuries are undiagnosed.

The most informative data about the ABI population in Tasmania can be drawn from those who report a degree of disablement – activity limitation and/or participation restrictions – as a result of their brain injury. Australian Institute of Health and Welfare (AIHW) analysis of the 2003 Australian Bureau of Statistics (ABS) Survey of Disability, Ageing and Carers indicates that in 2003 there were 12,600 people, across all ages, living with acquired brain injury in Tasmania.

Anecdotal information from various individuals has been included within the general text as this plays a significant role in understanding the issues within the Tasmanian context. Recommendations have been provided for further research and possible strategies for consideration.

KEY RECOMMENDATIONS

In preparing this paper, a number of issues requiring urgent attention relating to ABI in the Tasmanian Criminal Justice System were identified. In response, the following key recommendations have been made:

1. An independent review (co-coordinated by BIAT) to investigate the incidence and prevalence of acquired brain injury in the Tasmanian juvenile and adult criminal justice system be undertaken as a matter of urgency

2. That quantitative research specific to Tasmanians with ABI in the criminal justice system be conducted

3. That mechanisms are developed and implemented to allow early identification of individuals with ABI as they enter the criminal justice system

4. That awareness of the impact of ABI upon an individual's behaviour is raised and acknowledged at all levels of the criminal justice system

5. Staff within the criminal justice system receive appropriate training to ensure that those individuals with ABI receive appropriate assessments, programs, treatment and support

6. That standardised data collection processes be formulated across the criminal justice system and other key government departments such as the Department of Education and the Department of Health & Human Services

7. An inter-agency committee be established that has representatives from appropriate Government agencies and specialist support agencies to facilitate discussion and develop inter agency protocols

8. That policy development surrounding issues of individuals with ABI in the criminal justice system be developed and viewed as an opportunity in reducing the rates of recidivism

PAUCITY OF RELEVANT TASMANIAN DATA

The first issue that became clearly apparent while researching for this issues paper was the lack of Tasmanian and national specific research and data upon which to draw. The prevalence and impact of ABI in the criminal justice system is a neglected research area on a national level. As stated by Chan, Hudson & Parmenter (2004) "There is emerging evidence to link criminal offending and brain injury, but there is still limited research in this area".

There have been many studies completed and published focusing on mental health and criminal justice or intellectual disability and criminal justice but little on ABI and criminal justice. Caution must be used however when aligning acquired brain injury with intellectual disability or mental illness. This is also stated in BIA QLD paper (2005) "A widely perceived myth is that a brain injury is simply a type of intellectual disability. People with an acquired brain injury usually retain their intellectual abilities but have difficulty controlling, coordinating and communicating their thoughts and actions".

It is crucial to stress the difference between a 'developmental' intellectual disability and an 'acquired' disability. In the health and human services areas, an appropriate distinction is made between intellectual disability and brain injury because their needs and the best management approach for each group is considered vastly different. (Law Reform Commission NSW Report 80 (1996).

ABI can be masked by other factors and as Simpson & Sotiri (2004) observe "This perhaps becomes most evident when entering the criminal justice system and if the acquired brain injury is acquired early in life and never properly assessed, there is potential that behaviours that are a consequence of that acquired brain injury will never be properly attributed".

Therefore, complications of estimating the prevalence of ABI within the criminal justice system, coupled with the absence of reliable statistical data makes it difficult to provide qualitative and quantitative information on this very significant issue. O'Connor & Cripps (1999) suggest "Few analyses of the monetary costs of traumatic brain injury are available in the scientific literature……In particular there have been few large scale epidemiological studies." They further comment, "This is particularly difficult to understand when, from the available data, it is evident that severe head injury is a leading cause of death and disability among children and young adults, particularly males".

O'Connor et al, further suggest that "While thousands of Australians are effected by brain injury from traumatic causes (TBI), principally from falls, road crashes and being crushed or struck by objects ……..even mild brain injury can have dramatic effects for some individuals. Often the effects are not immediately recognisable during hospitalisation but appear after discharge".

Of significance therefore, are the numbers of head injuries occurring that are not reported, such as unconsciousness from playing sport, blows to the head by another person or object, falls or brain damage from alcohol or substance abuse just to name a few. As Jennet and MacMillan (1981 cited in O'Connor & Cripps) summarised, "It is not possible to state simply how frequently head injuries occur. No universal definition of practical value can be proposed to cover the many minor injuries known only to general practitioners, traffic police, officials at sporting events, and those that are never reported unless complications develop. The actual incidence of head injury is therefore an abstraction".

Consequently, it becomes apparent that deriving data focused specifically on acquired brain injury and the Tasmanian criminal justice system is complex to source. However, information has been investigated from a plethora of sources that clearly indicate the issues are extensive. As noted in a paper by the Office of The Public Advocate Queensland (OPAQ) (2005), "There is very little empirical data available in Australia or internationally on the prevalence of people with ABI in correctional systems. However, the Victorian Prisoner Health Study (February 2003) reported that 66% of males and 41% of female prisoners had experienced a head injury resulting in unconsciousness. It also found that 41% of women and 23% of men reported ongoing side effects such as memory loss, poor concentration and personality change".

Similarly, an American study conducted in 1998 by Sarapata, Hermann, Johnson & Aycock (cited in Chan et al) reported that people with head injury were at risk of committing crimes. For example, 50% of non-violent convicted felons reported a prior history of head injury, while 15% in a community sample reported the same, and 83% of felons who had reported a history of head injury also reported a date for their injury that preceded their first encounter with the law.

The Office Of the Public Advocate Victoria also acknowledge problems with gathering reliable data and state, " It remains a concern to the OPA that people with disabilities are being caught up in the criminal justice system in increasing numbers. Whilst the exact numbers are unclear, anecdotal evidence suggests a rise in the number of people with disabilities being arrested, interviewed, charged and presented to the courts".

Schofield, Butler, Hollis, Smith, Lee & Kelso (2006) also note, "Studies have consistently found high levels of traumatic brain injury (TBI) among prisoner populations (range 22-100%) leading to speculation that a causal link exists between the TBI, the neuropsychiatric (behavioural) sequela, and offending behaviour".

Schofield et al, provide some useful data and research methodology in their paper *Traumatic brain injury among Australian prisoners: Rates, recurrence and sequelae.* Research design was a cross sectional random sample of men recently received into the New South Wales criminal justice system. The data revealed some alarming results including 82% of those screened had sustained a traumatic brain injury (TBI) with or without loss of consciousness (LOC); 43% had sustained four or more TBIs, 52% also

reported that they had experienced some effect of the TBI and that the problem was still ongoing.

It seems clear that the literary review examined for this paper provides evidence there are high percentages of people with ABI within the criminal justice system on a national level. As acknowledged earlier, while this paper cannot quote Tasmanian specific data on this issue, a comparative analysis can be drawn based on the data extrapolated from national research.

Interestingly then, attention is drawn to Parliament of Tasmania Hansard (20 June 2007) – Estimates Committee B - Part 2, where discussion is focused on acquired brain injury and mention is made of the Tasmanian criminal justice system and a lack of solid Tasmanian data on this issue. Debate is centered on the numbers of prisoners with acquired brain injury both in adult (estimated 60% has some form of ABI) and juvenile correctional services (estimated between 30% and 60% having an ABI);

> *Ms GIDDINGS –We would dispute that.*
>
> *Mr WHITELEY- Oh, you would dispute that.*
>
> *Ms GIDDINGS – I think they are figures that have been extrapolated from other research that has been done. It is not research that has been done in Tasmania.*
>
> *Ms PUTT – No, I did say other jurisdictions.*
>
> *Ms GIDDINGS – We have used data that we collect. It is not research that has been done here in Tasmania.*
>
> *Ms PUTT – No, that is right.*
>
> *Mr WHITELEY – You use research to suit your purposes.*
>
> *Ms GIDDINGS – No, we use data that we collect and –*
>
> *Mr WHITLEY – Say it is 30 per cent*
>
> *Ms GIDDINGS – But what you are throwing around the table is not at all valid. It would not be robust data that would stand up because it is extrapolated data.*
>
> *Mr HOULT – In my previous occupations and from prison – Corrective Services – we could never verify that data or find it or replicate it. We have talked to the health providers for the prison service and it is not data they have ever seen or have knowledge of.*
>
> *Ms PUTT – But that might be an indicator of the lack of investment in this area, might it not, as much as an indicator that there is not that percentage of people.*

This is exactly the case in point; the fact acknowledgement is made that Tasmania has no robust data to draw from further highlights research is lacking and is therefore an area that requires attention.

Anecdotal verbal information provided during the preparation of this paper from individuals working within the Tasmanian community services and criminal justice sectors strongly indicates there are large percentages of individuals in the Tasmanian juvenile and adult criminal justice systems that have an ABI. Some causes assumed responsible for the presence of an ABI (as suggested by Tasmanian practitioners in the field) include those sustained from fetal alcohol syndrome, physical abuse as a child (it has been noted by Miller 1990 that physical abuse has been implicated as a cause of 95% of serious head injuries in children), physical assaults during adolescence and adulthood, and from chroming, alcohol and substance abuse.

Further in this paper, issues regarding the assessment of ABI when entering the criminal justice system will be discussed. It is important to include this discussion as it impacts upon the availability and reliability of data collection. It does appear that current assessment tools used in the juvenile and adult criminal justice systems are not adequate in recognising the presence of an ABI. These tools appear to be more generic in their scope and, while these are valuable and important tools, they are not specific to the assessment of the presence of an ABI.

Recommendations

1. That a collaborative partnership be established between the Brain Injury Association of Tasmania (BIAT), the Department of Justice, and the Department of Health & Human Services (Disability Services) in order to facilitate discussions on the development of research and data collection to ascertain the incidence and prevalence of ABI in individuals in Tasmanian juvenile and adult criminal justice systems.

2. That an independent review (coordinated by BIAT) be conducted to investigate the incidence and prevalence of people with ABI currently in Tasmanian juvenile and adult criminal justice systems.

3. That a research design similar to that of Schofield et al be considered as a valuable tool in establishing the prevalence of ABI among Tasmanian prisoners.

4. That recognition and data collection of ABI prevalence among Tasmanian prisoners and offenders within community based corrections is seen as an important public health opportunity for intervention and implementation of support strategies and programs within the Tasmanian criminal justice system.

WHY PEOPLE WITH ABI ARE AT GREATER RISK OF ENTERING THE CRIMINAL JUSTICE SYSTEM

The content below discusses not only the increased risk for people with ABI entering the criminal justice system, but also vulnerability and risk of abuse they may experience after entering the system.

Before addressing this issue it is pertinent to include the following quote from the Office of The Public Advocate Queensland: Issues for people with a Cognitive Disability in the Corrections System-***2.11 The theory of prison*** "Our society has determined that if a person has been convicted of a crime then they may be sent to prison as punishment. Two bases are used to justify prison as a 'correctional' institution. The first is to provide an opportunity for an individual to appreciate that what they did was wrong and 'pay the price for their actions', second, prison sentences imposed on offenders send a note of warning to others who may consider conducting themselves in the same way. Unfortunately, this theory of the function of imprisonment bears little reality for many people with cognitive disabilities".

It is not the purpose of this paper to discuss the theory of prison, however this quote provides the framework that indeed many people with ABI may have diminished decision making abilities. The lack of this ability can lead to risk taking behaviours and criminal activities where people with cognitive disabilities may not have the insight to understand the consequences of their actions. From the first instance of criminal behaviour, people with ABI are often vulnerable in dealings with police and the court system, and then if incarcerated they are exceptionally vulnerable within a correctional service setting. As stated by Davis (2000) "The ability to negotiate the criminal justice system requires the capacity to appreciate what constitutes a crime, either as victim, offender or witness".

People with ABI commonly exhibit a range of behaviours and experience a range of issues (See Appendix 1) that they may or may not be consciously aware of, however the commonalities are widely reported. As early as 1978 Lezak stated, "Changes in behaviour and control are extremely common following a brain injury. Moderate to severe behaviour disorders can present significant long term obstacles to community integration, contribute to instability of relationships, difficulty with work and problems with the law. The most commonly reported behavioral problems are disinhibition, impulsivity, socially inappropriate behaviour, lack of initiation, poor decision making and impaired judgment. Such difficulties are frequently compounded by lack of insight and awareness".

Simpson & Sotiri (2004) similarly comment, "Within the context of the criminal justice system, a cognitive disability may have many disadvantaging implications including: reducing a person's capacity to understand laws and societal norms, reduced planning skills and impulse control, being easily led and eager to please, increases a person's vulnerability to be a victim of crime and reduces their communication skills".

This paper has previously mentioned that the incidence of people who experience 'mild' head injuries are frequently not reported, however these people may share commonalities in behaviour changes as people with 'traumatic' or 'severe' head injuries. This is reported by Mandel, Sataloff & Schapiro (1993), "The problems experienced by victims of mild head injury often are indistinguishable from those found in patients who have sustained more severe head injuries. While the general prognosis for patients following mild head injury has been considered good, the current literature presents increasing evidence suggesting long term complications including cognitive, behavioural, emotional and vocational disability". Therefore, it cannot be assumed that even brief incidences of unconsciousness or other forms of injury to the head are less significant in including in data collection within the criminal justice system.

Considering the above points, it may be suggested that people with ABI have many disadvantages within the criminal justice system. Eagerness to please others renders individuals vulnerable not only to 'do the crime' for others, but also puts them in a weak position when first identified by police. They may have no understanding of their rights and be eager to please authority figures. As short concentration spans and short term memory loss are common, the first interview process by police has the possibility of implicating the person with ABI further as they may have little understanding of the legal process.

As noted in the Office of The Public Advocate Queensland Paper "people with cognitive disabilities often only remember the last phrase of sentences to make a judgment upon, they often long for friends and will misinterpret 'friendly' overtures of police and lawyers as acts of friendship to their disadvantage and they are unlikely to be identified in the early stages of penetration into the criminal justice system and are not provided with appropriate advocacy and legal representation".

Vulnerability of a person with an ABI is further exacerbated within a correctional facility and this is noted by Mullen (2001) who states "Hierarchy and coercion which tends to rule in the official structure is often mirrored in the subculture of prisoners. Mental disorders and intellectual limitations are frequently constructed by staff and prisoners alike as a sign of vulnerability and vulnerable is not a safe label to wear in prison".

Offenders with ABI are at risk of harm due to their susceptibility in the correctional system to abuse, harassment, exploitation and manipulation. They also find it more difficult to conform to prison routines, misunderstand what is expected of them and as a result may be victimized by staff and other inmates, face more disciplinary violations and greater loss of privileges and have an inability to benefit from existing rehabilitative programs. (OPAQ 2005)

Recommendations

1. That a framework for the identification of the presence of an ABI be developed providing mechanisms for police, judiciary, the legal profession and correctional officers which ensures structures and policies are in place to ensure people with an ABI receive appropriate supports.

2. That BIAT be funded adequately to further promote community awareness of ABI, particularly in administering awareness programs to key stakeholders including those mentioned in Recommendation 1 above.

JUVENILES WITH ABI IN THE CRIMINAL JUSTICE SYSTEM

Analysis of previous studies, submissions and reports reviewed for this paper ought to make us very alarmed of the issue of juveniles within the criminal justice system, a large percentage of whom may have a form of cognitive disability. *The Young People in Custody Health Survey* 2003 (cited in HREOC paper 2005) conducted by the NSW Department of Juvenile Justice revealed that in regards to cognitive ability, compared to other adolescents, many young people in custody may have difficulty comprehending, communicating and problem solving using language or numbers.

People with Disability Australia (PWD) in their submission to the Senate Affairs Committee March 2005 (cited in Protecting Vulnerable Children: A National Challenge Commonwealth of Australia), note that a large percentage of juvenile detainees have a disability. They go on to say that many children are not identified, which means their specific support needs are not addressed.

Lack of identification can begin within the education system and, although this issue is not within the scope of this paper, it is noteworthy. If children do not receive appropriate assessment at this level, their behaviours can be misconstrued and masked by other disadvantage, in turn leading them onto a path of criminal behaviour. As cited in paper by Oliver and O'Brien (2003), research (The Framework Report, 2001:13) has found that behaviour that leads to arrest is generally apparent during childhood, yet is not addressed by schools or other services.

The lack of prior assessments and documentation upon which to draw adds to the complexity and challenges of services responding appropriately when the young person first comes to the attention of the law. As cited in the paper by HREOC 2003, "there is very little data on the numbers and proportions of students *per se* with forms of cognitive disability such as learning disabilities, autism and acquired brain injury."

Anecdotal information provided for the purposes of this paper suggests that some juveniles within the Tasmanian Criminal Justice System have an ABI possibly derived from fetal alcohol syndrome, physical abuse and alcohol and substance abuse including 'chroming'. Furthermore, anecdotal information suggested young people from indigenous origin are over-represented within the Tasmanian criminal justice system. This is a complex and important issue and the attention it deserves cannot be addressed within the context of this paper, however it needs urgent review. International research suggests that indigenous cultures are at most risk of not only becoming involved with the criminal justice system, but also of being over-represented in any given prison population. (Cited in Oliver & O'Brien 2003).

Again, specific data for Tasmania is difficult to obtain (both in Community and Custodial Services), primarily due to the assessment tools currently used do not appear to collect information on head injuries, and the fundamental nature of acquired brain injuries that could be masked by other disadvantages.

The Tasmanian context

- Youth Justice Services in Tasmania is comprised of two components: Community Youth Justice and Custodial Services. These services work closely to ensure a coordinated and integrated assessment and case management practice is used across Youth Justice Services.

- The Community Youth Justice Service has a supervision and management role for young offenders who either have a statutory order resulting from a court order resulting from a court appearance or an obligation to perform that was agreed to during a community conference.

- The Custodial Service provides custodial services at Ashley Youth Detention Centre. (Australian Institute of Health & Welfare – AIHW 2007)

Below (Table 1) are the numbers of young people under juvenile justice supervision in Tasmania in the years from 2001-2005. Note that some young people will have experienced both community and detention supervision during any collection year. Nationally, there has been a small decline (decrease between 2003-2004 and 2004-2005 is only 5.5%) in the number of young people under juvenile justice supervision and this is also evident in Tasmanian numbers.

Year	**Community**	**Detention**
2001-02	459	126
2002-03	507	105
2003-04	543	101
2004-05	512	97

Table 1. Young people under juvenile justice supervision in Tasmania 2001-2005
(AIHW –Juvenile Justice in Australia 2004-05)

It could be assumed that the decline in the number of young people under supervision in Tasmania can possibly be attributed to effective case management and pre-court diversion of young people from the criminal justice system under the Informal and Formal Cautioning and the Community Conferencing provisions of the *Youth Justice Act* 1997. What is not known is the percentage of these young people that have an ABI. It is also difficult to estimate how effective community conferencing is for young people with an ABI considering first that they may never have been identified as having an ABI and second the effects of ABI including diminished ability to learn from their experiences, memory loss, impulsivity and lack of insight can contribute to complex behaviours.

Assessment tools

At present there are two assessment tools utilised in the Tasmanian juvenile justice system. The Electronic Risk Assessment Tool (ERAT) was developed and implemented by Community Youth Justice. Prior to sentencing the *'ERAT'* is used to assess needs and criminogenic risks such as drug and alcohol usage, socio status including stability of family relationships, housing, academic/vocational skills level and financial management. Juveniles are assessed on scales for both 'risk' and 'needs' and an overall assessment is based on these, ranging from low to high. There were no health related questions (particularly specific to ABI) sighted within this document, aside from alcohol and drug usage.

The assessment tool implemented at Ashley Detention Centre is '*Secure Care Psychosocial Screening' (SEACAPS V.5).* This tool was introduced at Ashley Youth Detention Centre in February 2006. The purpose of this screening is to assess the level of recidivism risk and intervention needs of young offenders. This is a comprehensive assessment that collects wide ranging data including but not limited to; information on young persons home life, alcohol and substance use, criminality and alcohol and substance use of other family members, eyesight and hearing, reading, writing and numeracy tasks, peer relationships, recreation and leisure, education level, employment, anger and conflict, mental health status and questions relating to ADHD.

While reviewing this document it was noted that within the section regarding anger and conflict there are some questions that could be useful in collecting data specifically on ABI. Of significance is question 11; *What is the most serious injury you have had in a fight?* However, this question is contained within the Add-on Assessment Modules (Optional Use) section and therefore it would be at the discretion of the assessor if they felt an area required further investigation. Acknowledgment is given that caution must be used when interpreting this assessment tool as only trained assessors can administer the screening, however the above question was the closest that could be sighted regarding any ABI specific questions. Also noted is that SEACAPS is a self report only, therefore reliable data is contingent upon the young person offering accurate information, This is an extremely vulnerable method of assessment particularly if the respondent has difficulties with insight, memory, concentration and/or communication ie receptive language.

With the above difficulties in obtaining reliable data, consideration should be given to research in Tasmania that specifically focuses on ABI in juvenile justice.

One such study was conducted by the NSW Department of Juvenile Justice – NSW Young People in Custody Health Survey 2003, where it was found from a sample of participants (n=242) of young people in custody of whom 92% (223) were male and 8% (19) were female, 40% (84) of young men had sustained a head injury in which they had been unconscious or 'blacked out'. Most were the result of being struck by an object or person (fights) (63%) or low falls (13%). Memory loss (19%) and poor concentration (18%) were the most common unresolved side effects from reported head injury by young men. Only one female reported sustaining a head injury.

A similar study conducted in Tasmania would be of great significance to the identification, assessment and case management of young people with ABI in the Juvenile Justice System.

Recommendations

1. That, as a matter of urgency, the Tasmanian Department of Justice fund a study similar to that of the NSW Young People in Custody Health Survey 2003 with the aim that once identified, appropriate programs and case management be developed and implemented.

2. That assessment tools 'erat' and 'SEACAPS' be revised to include questions specific to ABI. These should be obligatory rather than optional components of the assessment tool.

3. That urgent attention is given to and research be conducted on the issue of indigenous young people and ABI within the juvenile justice system.

Early Intervention

It is not until reliable data can be sourced that young people with ABI within the juvenile justice system can be assessed and given the support and early intervention that is required to divert them away from a revolving door of criminality, double disadvantage and despair. In terms of social and economic terms to our community, it makes more sense to fund support systems and programs than the level of funding required for one young person in detention per annum. Anecdotal information estimates this cost to be in excess of $200,000 per person per annum. (Not verified). An article in The Mercury (July 12, 2007) states this figure to be $250,000 as the figure for housing a young offender for a year.

Byrnes (1997) argues that it is a sad indictment on our welfare system which, instead of responding appropriately to the need for early intervention, allows problems to fester until they become criminal justice issues. It would be more cost effective in economic and social terms for problems to be addressed through early intervention programs as soon as they became apparent.

It also makes sense to say that once a juvenile enters the criminal justice system, there is a high likelihood that the trajectory will continue. As noted in (HREOC paper 2005), if a young person comes into contact with the formal criminal justice system, especially the custodial system, then they are more likely to have ongoing contact with the system, than those individuals initially diverted from the system.

Similarly, Lynch, Buckman & Krenske (2003), suggest that by the time young people come to the attention of the juvenile justice system, it is difficult to modify a trajectory whose 'direction' has already been substantially determined by a very wide range of precursor factors that can no longer be effectively addressed by any single government agency.

Further, as Oliver and O'Brien (2003) suggests, current service provision is primarily single focused rather than in holistic nature. For a person with multiple needs it can therefore be fragmented. This can rise to serious difficulties in addressing the often broad and varying needs of people, particularly those with a cognitive disability.

The provision of early intervention strategies and programs for juveniles with ABI is therefore more complex, considering that there is a lack of comprehensive identification processes in the first instance. There needs to be willingness on behalf of appropriate government agencies to acknowledge this issue and provide solutions to addressing early intervention programs once a juvenile is identified as having an ABI.

Hopefully if ABI is considered under multiple and complex needs, key policy directions in Tasmanian Juvenile Justice may serve to work towards and implement policy that not only acknowledges ABI but effectively supports young people with early intervention strategies, diverting them from the criminal justice system.

As noted in AIHW 2007: The Key policy directions in Tasmanian Juvenile Justice (and of particular relevance to this paper is) 1.3.6 dot point 3: "*Reduction of offending through effective case management of young people based on effective need and risk assessment and case management. A particular emphasis is placed on young people with multiple and complex needs whose behaviour is at risk of being criminalised and young people exiting custody."*

Recommendations

1. That standardised assessment tools for the identification of ABI be developed and utilised for young people who appear at risk of offending, allowing for effective and appropriate case management.

2. Consideration to be given to the utilisation of such assessment tools via a cross-agency approach including; Department of Education, Family and Children's Services, Disability Services and Department of Justice. This would also allow for broader policy frameworks and standardised data collection.

3. That BIAT be adequately funded to administer preventative and awareness campaigns in the broader community and in the education system including custodial environments and rehabilitation programs.

Juvenile Recidivism

Recidivism is a complex issue; it is important however to include some discussion on this topic. As also acknowledged by Drabsch (2006), determining the proper response to the reoffending behaviour of criminals has plagued governments, criminologists, the judiciary and the community for some time. Nonetheless, approximately 60% of those in custody in Australia have previously served a period of imprisonment.

Recidivism among juvenile offenders is affected by multiple factors, ranging through early developmental issues, personal characteristics that remain stable over the entire life, the social and economic environment surrounding individuals, the age of onset to delinquency, the length and intensity of delinquent careers, and the responses of the justice system. (Carcach & Leverett 1999)

Data derived from a study on Youth Justice criminal trajectories (Lynch et al 2003) shows that the vast majority of young offenders on supervised orders progress to the adult corrections systems with half of them having served at least one term of imprisonment. Analysis of risk factors finds that 91 per cent of those who have been subject to a care and protection order progressed to the adult system.

This is also supported from statistical evidence from the Western Australian Department of Justice showing a high likelihood of juvenile detainees later becoming adult detainees in the justice system. (Cited in Protecting Vulnerable Children: A National Challenge 2005).

Considering the affects of ABI as previously discussed, juveniles with ABI are in a high risk category for re offending. The associated problems of having an ABI including a lack of insight and the inability to consider the consequences of their actions, renders them particularly vulnerable.

It is possible that juveniles with ABI entering a detention facility may have less opportunity to receive appropriate intervention and case management due to the lack of identification of an ABI, and coupled with this is an environment that may further serve to disadvantage them, particularly as they may be eager to please those perceived to be more powerful than them (such as other detainees). The very nature of a prison environment automatically places the offender with a cognitive disability at a disadvantage. (Oliver et al 2003)

Studies have shown a strong correlation between custodial penalties and recidivism. As far back as the 1970s studies revealed that even a short term on custody on remand was found to significantly increase subsequent offending (64.3 per cent) compared to being placed on remand at home (36.6 per cent). (Cited in HREOC paper 2005).

Additionally, Lynch et al, acknowledge that one of the main findings that have emerged from previous research into the offending trajectories of juvenile offenders is that assignment of severe punishments for early criminal behaviour can result in greater recidivism.

Case management for juveniles with ABI to help in reducing the rate of re offending must be specific to their needs. Intervention strategies should be specific to particular subgroups. Until ABI is identified as a real and crucial issue in supporting juveniles within the justice system, it could be suggested that many juveniles re offending may have some level of an ABI.

Once again, Tasmanian specific data does not appear readily available. According to Carcach & Leverett 1999, juvenile offending is one area where there is a lack of appropriate and meaningful statistical systems to assist public policy. "Understanding juvenile recidivism is crucial for the development of policy responses to the broader issue of juvenile crime and delinquency."

Recommendations

1. That a commitment to identifying ABI in juvenile offenders be strongly considered at all levels of the juvenile justice system.

2. That statistical data be collected that includes incidences of juveniles with ABI in the justice system, particularly those that re offend

3. That statistical data collected on juveniles with an ABI (as per Recommendation 2) be used to develop policy responses to recidivism.

4. That case management and programs be expanded to include dealing with the effects of ABI for juveniles under either a community or detention supervision.

5. That research is directed toward the issue of recidivism relating to juveniles with ABI.

ADULTS WITH ABI IN THE CRIMINAL JUSTICE SYSTEM

Between 2004 and 2005, there was an increase in the number of adult prisoners in all states and territories except South Australia and the Australian Capital Territory. Tasmania had the highest proportionate increase (23%). (ABS 2005)

There was no readily available data to substantiate that any percentage of these Tasmanian prisoners had an ABI. Again, national research is extrapolated to make comparative suggestions that ABI is an issue that exists in the Tasmanian prison system.

There is very little empirical data available in Australia or internationally on the prevalence of people with ABI in correctional systems. This cohort remains unresearched in terms of numbers, types of injury, resultant behaviours and how individuals may be assisted with their challenging behaviour. (OPAQ 2005).

The Tasmanian context

Tasmanian Community Corrections Service (TCCS), along with other States and Territories operate under a set of guidelines (Standard Guidelines for Corrections in Australia Revised 2004). The guidelines and the accompanying principles constitute outcomes or goals to be achieved by correctional services rather than a set of absolute standards or laws to be enforced.

Tasmanian Community Corrections Service manages offenders on probation, parole and community service orders. TCCS also manages one secure correctional facility for adults, Risdon Prison, Hobart.

It is not within the scope of this paper to discuss the judicial and correctional services system in any depth, for more detailed information refer to www.justice.tas.gov.au.

In Tasmania in 2006, the adult prison population was n=512. This is made up of males, females, indigenous people, those sentenced, those unsentenced (meaning on remand: those persons who have been placed in custody while awaiting the outcome of their court hearing. They may be unconvicted and remanded in custody for trial, convicted but awaiting sentence or awaiting deportation).

A startling statistic is that 342 of these prisoners had previously been imprisoned. (ABS Prisoners in Australia .4517.0. 2006). Table 2 overleaf presents the data.

Males	474
Females	38
Indigenous	53
Non-Indigenous	459
Sentenced	385
Unsentenced	127
Prior imprisonment	342
No prior imprisonment	170
All prisoners	512

Table 2: Tasmanian adult prisoners 2006 (ABS 4517.0 2006)

Briefly, within Community Corrections, offenders can be given:-

- A community service order with the aim of the offender to be seen to be repaying the community for his/her crime;
- A probation order that can be used as an alternative to prison
- Parole – that allows a prisoner to live in the community while finishing their prison term while under the supervision of Community correction staff.

Community corrections can be an alternative in some circumstances to being incarcerated, however, given the requirements of orders, it can be difficult for some offenders with specific needs to consistently comply with them e.g.; an offender with acquired brain injury may find it difficult to remember appointment times. (Queensland Corrective Services Policy and Action Plan 2006-2009 p8)

If an offender is convicted and ordered to the prison system for a period of incarceration, the offender goes through the Integrated Offender Management (IOM) process when entering prison. The key components of the model are: Reception and induction, assessment, sentence planning, case management and reintegration (Department of Justice Tasmania).

IOM is comprised of three tiers:-

- ***Tier 1:*** The offender receives an induction and a Tier 1 assessment on admission. This tier collects personal information, and identifies immediate needs and health status. Further assessment and planning particular to the offender is then undertaken.

- ***Tier 2:*** Assesses and identifies the reintegration needs of the inmate. This information is used to develop a reintegration plan in conjunction with the inmate.

- ***Tier 3:*** This assessment (LSCMI), Level of Service Case Management Inventory, identifies the criminogenic needs that should be addressed. These needs will then be taken through appropriate programs.

Although these documents were not sighted, anecdotal information provided strongly suggests that there are no specific questions or health assessments that relate to or identify the presence of an ABI. Refer to earlier comments on this issue.

In relation to ***Tier 3,*** appropriate programs that may be offered include (but are not limited to) programs concerning drug and alcohol and issues regarding violence (such as anger management). This could be problematic for offenders with ABI as they are voluntary programs only. As previously discussed, people with ABI have many issues as a result of their injury and therefore in the first instance may not even identify themselves as having problems, have difficulty understanding any relevance of a program or cannot assert that they may require more intensive support. This issue was highlighted in the OPAQ paper in that people with ABI may have little, if any insight into how they may have changed, or how their behaviour affects others.

Anecdotal information provided also suggests that there is no specific support or screening tools for people with an ABI entering the Tasmanian criminal justice system regarding whether they are 'fit to plea', unless an ABI can be clearly proven. This becomes problematic for those for whom an ABI has never been formally identified. For an offender to go through a referral process to be assessed for their ability to plea requires in the first instance for the offender to state that they have an ABI or that a significant person in their life can attest to the presence of an ABI.

This further compounds the issue as the problem for many people with brain injury is that their motor skills may not be affected at all, so there is no visible cue to others that can identify them as injured. Consequently family, and the community generally, may be intolerant of any behavioural changes that may have occurred for the person as a result of their accident.

An offender with ABI therefore, may be confused and overwhelmed by the nature of court itself, have difficulty in relaying their thoughts and by disadvantage of an ABI may inadvertently incriminate themselves. For many, the prison system may be the next path.

Screening and assessment upon entering prison

If screening for ABI was available via court liaison in the first instance, as argued by Schofield et al, it would offer the possibility of 'early' intervention in a high-risk group and the avoidance of inappropriate incarceration.

If identification of an ABI has not been recognised and documented prior to incarceration, this should be an automatic inclusion when first entering prison, included in the initial health assessment. Identification is essential for appropriate case management, programs and appropriate rehabilitation.

Schofield et al suggest that recognition of the possible behavioural sequelae of ABI (sic) by custodial authorities is needed since these individuals may exhibit behaviours deemed to be offensive or anti-authoritarian which can impact on correctional care management. For example, those with resultant memory loss or short attention spans may forget instructions from custodial officers leading to the impression of defiance. People with behavioural problems arising from an ABI (sic) may also be singled out by other prisoners and become involved in inter-personal conflicts. While diversionary schemes for people with a mental illness have been established, there is little help or support available for inmates with ABI (sic).

OPAQ paper (2005) also identifies the issues faced by people with cognitive disability within correctional services, "This cohort has a higher rule violation rate than other offenders. In particular, this group is generally unable to, inhibit behaviour, to apply past warnings about consequences to their actual behaviour, generalise learning, remember what is expected of them and read and respond appropriately to non-verbal social cues. All of these skills are required if they are to successfully navigate the intricate world of prison. This means they will continue to attract the prison offences provisions unless and until the reality of their condition is factored into their treatment".

Of interest, Queensland Corrective Services (QCS) has developed a "Policy and Action Plan 2006-2009 – Offenders with Specific Needs". This plan arose from a review of QCS business model. The review recognised increasing proportions of offenders with special needs including acquired brain injury (noted under umbrella of cognitive impairment) in the offending population. In order to effectively support offenders with special needs, the Immediate Risk Needs Assessment (IRNA) has been amended to include references to categories in defining specific needs including ABI. Supporting documentation has been developed and relevant staff have been trained in the use of the assessment, framework, including the IRNA as it relates to offenders with specific needs.

QCS is also participating in the development of a whole-of-government response to recommendations from a Legal Aid Queensland disability project, for a shared screening tool to identify offenders with an intellectual disability or cognitive impairment across the criminal justice system. It would be of concern however if this screening tool equated the two disabilities as very similar and did not identify ABI.

Corrections Victoria has also recognised the need for review of their screening tools to identify cognitive disabilities. In relation to their Tier One assessment, this initial screening process is currently being expanded, particularly through the provision of additional screening tools for Assessment Officers. (Persson, 2003 cited in Oliver & O'Brien)

Recommendations

1. That screening tools be developed that encompass specific assessment and evaluation for the presence of an ABI, such as the one developed by QCS.

2. That BIAT be consulted for input into the development of such tools for the provision of relevant and appropriate information.

3. That screening tools be standardised across the criminal justice system in order to derive consistent and reliable data and to ensure that people with ABI are supported at whatever point they become involved in the criminal justice system.

Appropriate programs while in prison

As previously stated, a wide range of rehabilitative and education based programs are available while in prison including those that address issues of alcohol and substance abuse and violence. While these programs may be advantageous to offenders with an ABI (many may have problems in these areas), these programs are voluntary and therefore may not be readily accepted as needed by the offender. Offenders with an ABI may also require support to participate in these programs to achieve maximum benefit and/or outcome.

The Office of the Public Advocate Victoria (2004), state that "Prisoners with disabilities have special needs. Programs, supports and services should be available which ensure that the special needs of these prisoners are adequately addressed".

Also noted by Gardner (2004), imposing sentences of imprisonment is intended in part to be a deterrent. For a person to be deterred assumes a capacity to understand the consequences of their actions and an ability to learn different behaviour. Within prisons there is a lack of recognition of cognitive disabilities and a lack of targeted rehabilitation programs designed to meet the specific learning needs of people with cognitive disabilities.

Case plans/sentence plans should be developed by specialist support staff. The care plans should identify a range of specialist programs to assist disabled prisoners (including those with an ABI) (sic) to deal with their offending behaviour and which maximise their opportunities to successfully reintegrate into the community. (Public Advocate Victoria 2004).

As noted in QCS policy and Action Plan, the ability of offenders with specific needs to participate in programs can be hampered by their specific needs. For example, offenders may not be able to understand the content of programs or health problems may prevent their attendance at programs.
The ongoing management and follow through with specialist programs that may have been implemented while in prison is crucial when the offender reintegrates into the community. Oliver & O'Brien (2003) also acknowledge this and point out that, "Any appropriate rehabilitation received by offenders with cognitive disability while in prison needs to be supported and maintained through the provision of transitional support when they return to the community. There is little point in corrections providing a thorough and effective transitional support program if outside community services are not involved".

Recommendations

1. That in collaboration with a range of specialist agencies and individuals (such as Mental Health, Disability Services and Brain Injury services, educationalists and psychologists), programs be developed and implemented that address the specific needs of offenders with ABI.

2. That specialist support services be involved with case management for the reintegration of offenders in conjunction with components of the specific programs received while in prison.

3. That an inter-agency committee be established that has representatives from appropriate Government agencies and representatives from specialist support organisations for the facilitation of discussion and development of inter agency protocols regarding responsibility for case management, planning processes for offenders and collaboration between agencies and services.

Training

Education is essential to ensure that those mechanisms adopted to address problems in this area succeed. Education is probably the most critical element of any strategy designed to overcome the disadvantages suffered by people with an ABI (sic) within the criminal justice system. (Byrnes 1997)

Under the framework of the IOM at Risdon Prison, correctional staff will also actively participate in case management (Department of Justice). This changes their traditional role significantly and therefore they play a vital role in the effective management of offenders with ABI. In order for correctional staff to be supported in this role, education and training should be provided specific to understanding the effects of brain injury.

Considering the behavioural changes experienced by people with ABI as previously discussed, a prison environment may further add to their often challenging behaviour. They may have difficulty understanding what is expected of them, adhering to the 'rules' and being viewed as 'rule breakers'.
People who are in prison with 'challenging behaviour' may manifest behaviours that no amount of 'prison discipline' is able to 'cure'. There is a wide body of available research showing that if behaviour is appropriately analysed and the reason for it identified then people can be assisted to change. (The Office of Public Advocate Queensland 2005).

This issue has been recognised by Corrections Victoria and upon evaluation of their Tier One assessment in 2003 they identified the need for staff training in the assessment and identification of prisoners' special needs such as prisoners with acquired brain injury, psychiatric illness and other forms of disability (cited in Oliver & O'Brien).

Training and education should also be offered to personnel in all levels of the justice system, including court liaison officers, police and judiciary. BIAT in their Community Consultation Issues Paper 2006 recognise that this is an area that requires attention and suggest that there is clearly a need for court liaison officer positions statewide, with specific awareness of issues for people with ABI, to identify people's needs and co-ordinate appropriate supports and outcomes within the justice system, as required.

Anecdotal information suggested that while many people working within the criminal justice field and other associated fields have some awareness of ABI, there are no resources, including assessment tools in which to clearly identify ABI and to be able to offer referral and further support for the person.

BIAT provide 'ABI Identification Cards', and improved awareness and understanding of the purpose of these cards, used by people with ABI, is a useful tool for Tasmanian Police personnel (as they are usually the first point of contact into the criminal justice system) and the general community.

Recommendations

1. That correctional staff have access to, or are provided with, education and training specific to ABI including types, causes, impact, outcomes, case management and support strategies etc.

2. That BIAT be resourced adequately to be able to deliver training within Correctional Services, including Risdon Prison, the Police Academy and to court personnel.

3. That BIAT be resourced adequately to broaden awareness and availability of, and maintain the database for the 'ABI Identification Cards'.

Adult Recidivism

A greater emphasis on rehabilitation is needed within the Tasmanian prison system if there is to be any hope of reducing recidivism from the current rate of sixty per cent. (Media Release 13 October 2006 Tasmanian Catholic Justice and Peace Commission). It was previously acknowledged that recidivism is a complex issue and there are no easy answers to resolving this problem. However, it is noteworthy in the context of this paper considering people with ABI are at much greater risk of reoffending.

Table 2, page 25 showed that in 2006, 342 Tasmanian prisoners out of 512 had been previously imprisoned. Of course, there is no qualitative data available to confirm if any of these offenders had an ABI.

There are many factors that may have an impact on recidivism rates for people with ABI, and this includes the lack of targeted programs while in prison. A report from the Victorian Auditor-Generals' Office Victoria notes that the extremely limited offender rehabilitation program base in prisons has been identified as a key factor in the rising level of recidivism in the Victorian corrections system. Historically, there was an inability to differentiate between prisoners with differing levels of risk and need, and hence interventions for prisoners could not be targeted to their specific needs.

It could be suggested that this is also a key factor in Tasmania when considering offenders with ABI. Until specific targeted programs are developed and implemented, this cohort may not be receiving appropriate intervention, case management and personal skills required for successful reintegration, and this thereby renders them more vulnerable in being re incarcerated.

Offenders with ABI also may have the inability to reflect and learn from their mistakes and the inability to formulate plans and goals for their future. This is when support services are crucial in the reintegration process and they play a significant role while not only when offenders are in prison, but upon their release.

At present there are many government and non government organisations that provide support and services for offenders and these include; Drug and alcohol, housing, employment and training services, financial support and counselling, family and relationship support services and health services. *(Commendation is given to many of the non government organisations that are often under resourced, have huge case loads and operate in an environment of financial uncertainty, but continue to strive to deliver vital support.)*

As noted by Ward (cited in Oliver & O'Brien 2003), It appears the link between reduced reoffending and stable post release, housing, employment and social connections is so well established that these three areas of practical assistance should be a primary focus of transitional support services that seek to impact recidivism.

In Tasmania there are specialist ABI services available that provide programs and case management, and who are able to take referrals from correctional services for offenders with ABI requiring post-release support. Currently specialist ABI services in Tasmania receive very few referrals from the prison system and should be utilised as a crucial resource in the provision of individualised and appropriate programs.

Recommendations

1. That specialist ABI services be consulted for their expertise in issues experienced by people with ABI, particularly in the reintegration process of offenders.

2. That policy makers consider that ABI and issues specific to this disability be a component of any future research and policy development relating to recidivism rates in Tasmania.

REDEFINING THE ISSUES

People with ABI at risk of entering or who have already entered the criminal justice system have an array of difficulties that further compound their vulnerability in this system. From their first encounter with the law, these individuals may indeed be disadvantaged and overwhelmed by the language and processes of the legal system.

Difficulties in understanding and processing information, short term memory problems, impulsivity, aggressive behaviours, inappropriate social behaviours, poor problem solving skills and a lack of insight, can all serve to have people with ABI often incorrectly labeled as 'trouble makers' and 'rule breakers'.

If the individual cannot attest to having an ABI (possibly due to a lack of insight; they do not recognise the changes within themselves after acquiring an ABI) or does not have an advocate to confirm the resulting impairments on their behalf, they are faced with a system that further compounds their disadvantage and vulnerability. A prison environment is particularly difficult for them.

Imposing sentences of imprisonment is intended in part to be a deterrent. For a person to be deterred assumes a capacity to understand the consequences of their actions and an ability to learn different behaviour. (Gardner 2004)

As stated previously in this paper, once incarcerated, people with ABI are particularly vulnerable to abuse and as stated in paper by the Public Advocate Victoria (2004), "People with disabilities are vulnerable and at risk in custodial environments. They should be afforded adequate protection from self harm and from harm by others when in custody in either a police lock up or a prison".

However, given that prison is a reality, the key issue is that in many cases people with cognitive disabilities are unable to learn how to change their behaviour from the prison experience itself or from the programs offered there; and they are unable to learn from imagining the experience of others. (OPAQ 2005)

It is crucial therefore, that programs offered while incarcerated are appropriate to the needs of people with ABI and that these programs serve to assist in a successful transition back into society after release. As noted in the paper by the Australian Government Attorneys General's Department (2005), " The time following release from imprisonment is a life transition – an event that brings with it stressors that can make individuals particularly vulnerable to re-offending". For people with an ABI that have received no targeted programs and interventions addressing their specific needs while in prison assumes a greater chance of reoffending.

CONCLUSION

This paper has highlighted some of the issues regarding juveniles and adults with ABI within the criminal justice system. From the national statistical and research based evidence and local (anecdotal) evidence presented, people with cognitive disability are over represented in the criminal justice system. Unless evidence is produced to the contrary, it is assumed that similar prevalence trends exist in Tasmania. To ignore this very significant issue would be an injustice to Tasmanian people with ABI at risk of entering, or already in, our criminal justice system.

A lack of Tasmanian data compounds a complex problem that deserves timely and close attention. Lack of data is not a phenomenon unique to Tasmania but is also an issue nationally. The "Head Injury Impact" 1991 project conducted jointly by the Health Department of Victoria, Community Services Victoria and Transport Accident Commission, states "because of the general absence of interest in head and brain injury, few agencies have produced statistics on it. Furthermore, the division of responsibility among agencies has resulted in little comprehensive data linking cases and outcomes." (Cited in O'Connor & Cripps).

A review of current assessment tools used, and programs offered, in both the juvenile and adult Tasmanian criminal justice systems could be the first positive step forward in addressing an increasing and complex problem.

A whole-of-government approach is required to deliver support to people with ABI, particularly those at risk of offending. It cannot be the responsibility of a single agency, and it should be viewed as an opportunity to reduce the economic and social costs to our society, including reducing the rates of recidivism.

It may require the 'will' of our policy makers to first acknowledge this issue, and second develop and implement policies and programs appropriate to people with ABI in the juvenile and adult criminal justice system.

This general malaise cannot continue if we claim to be a society that proudly proclaims to being equitable, egalitarian, and very quick to attest our own rights as citizens. As stated in the OPAQ paper 2005, "Section 9 of the *Disability Services Act 1992* provides that people with disabilities have the same basic human rights as other members of Australian society. Implicit in this statement is a requirement that procedures are in place in our major institutions to ensure that this aim is achieved".

BIAT will continue to advocate and lobby for people with ABI ensuring that they are not the forgotten group in the Tasmanian criminal justice system.

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Appendix 1

IMPACT OF BRAIN INJURY
(Reproduced from BIAT Issues Paper April 2006)

The number and severity of problems resulting from a brain injury will differ from person to person because each individual's brain varies in the extent and location of damage. The extent of some of these changes may only become apparent as time progresses.

Cognition
Cognition is the conscious process of the mind by which we are aware of thought and perception, including all aspects of perceiving, thinking and remembering. In general, cognition is knowledge – the way we learn and perceive the world around us.

Lack of insight: People with brain injury may have great difficulty seeing and accepting changes to their thinking and behaviour. The person may deny the effects of the injury and have unreasonable expectations about what they are able to do.

Memory problems: There are many ways memory can be affected. The most common is loss of short term memory, with problems in remembering people's names or appointments, passing on messages or phone calls, or remembering details read in a book or newspaper. In therapy the person may forget what they are doing from one session to the next.

Poor concentration: A very common outcome is a tendency to lose concentration or be easily distracted from what they are doing. This is usually because they are having difficulty concentrating. The person may have a short concentration span, which means they might jump form one thing to the next.

Slowed responses: The person with brain injury may be slow to answer questions or to perform tasks and may have difficulty keeping up in conversation. Their capacity to respond quickly in an emergency may also be lost.

Poor planning and problem solving: people with brain injury may have difficulty solving problems and planning and organising things they have to do. They may encounter trouble with open ended decision making and complex tasks need to be broken down into a step by step fashion.

Lack of initiative: In spite of all good intentions a person with brain injury may sit around at home all day long and watch TV. If the problem is severe they may need prompting just to have a shower and get dressed or participate in a conversation.

Inflexibility: people with brain injury can be very inflexible in their thinking. They can't always change their train of thought, so they may tend to repeat themselves or have trouble seeing other peoples' points of view. They may not cope very well with sudden changes in routine.

Impulsivity: people with brain injury can be very impulsive because they may have lost the filtering system or control that makes them stop and think before jumping in. This can lead to a wide range of behavioural issues and problems with relationships and finances.

Irritability: People with brain injury tend to have a low tolerance for frustration and can lose their temper easily. If kept waiting for an appointment they may become agitated and walk out. They may become unreasonably suspicious and paranoid.

Socially inappropriate behaviour: people with brain injury may have difficulty judging how to behave in social situations. They may walk up to strangers and start telling them about their accident, they may be over familiar with therapists or they may make inappropriate sexual advances. This area can be incredibly difficult for families or partners. In more severe cases the person will often end up homeless or in the correctional system.

Communication: A broad range of social skills may be affected by a brain injury including the ability to start or take turns in conversation, interpret and respond to social cues, show interest in others, use humour appropriately, shift between topics of conversation and regulate the volume and tone of voice. People with brain injury often lose their listening skills and may talk excessively. Accompanying memory problems may mean that they often repeat topics as well.

Self-centeredness: people with brain injury will often appear to be self centered, and may be very demanding and fail to see other people's point of view. When this happens, resentment can build up from family members, and it is a key cause of losing friends and having trouble establishing new friendships.

Dependency: One of the possible consequences of self centeredness is a tendency for the person with brain injury to become very dependent on others. The person may not like being left alone, and constantly demand attention or affection.

Emotional labiality: Just as people with brain injury have difficulty controlling their behaviour, they may also have difficulty in controlling their emotions. They may cry too much or too often or laugh at inappropriate times, or they may suffer rapid mood changes, crying one minute and laughing the next.

Depression: depression in a person with brain injury is a very common emotional consequence that usually comes some time after the injury. Signs of depression include lack of motivation, loss of sexual drive, sleep disturbance and tearfulness.

There can also be a range of physical changes after a brain injury including: loss of taste and smell, dizziness and balance problems, epilepsy and seizures, fatigue, headaches, visual problems, chronic pain, paralysis, and hearing problems. These problems of course vary from person to person and depend upon the type and severity of the brain injury.