PEOPLE WITH ACQUIRED BRAIN INJURY AND THE VICTORIAN JUSTICE SYSTEM

Rights and Resources

Suzanne Brown
Glenn Kelly
Deidre Griffiths
Hayley Clarke
Ben von Einem

This information book of rights and resources has been designed as a practical guide for people with ABI, as well as their families, carers and advisers as they negotiate the justice system.

What to do, who to ask, and how to respond when faced with arrest, questioning, police custody, court hearings, conviction, prison and release.

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Preface

In the 1990s the first substantial studies started to appear documenting high rates of acquired brain injury (ABI) among prison inmates. At first the figures seemed to be too high to be believable, but as further studies have been published, the full extent of the problem has become clearer. The results from these studies gives rise to the challenge of how to respond to remediate this substantial and thorny social problem. Part of the complexity arises from the mismatch between knowledge and skills across service systems that need to work together if the overrepresentation of people with ABI within the criminal justice system is going to be resolved. Traditionally, the ABI disability service sector has had limited knowledge about the working of the criminal justice system. Similarly, the criminal justice system has had limited knowledge about ABI and the disability service sector. And between the two, people with ABI, their families and broader social networks may know little about either.

The current resource represents a substantial, ground-breaking step in addressing this problem. The provision of information is a central strategy in helping people to be more knowledgeable and thereby empowered if caught up in the criminal justice system. Previously, people with ABI have had no easy access to such information, written with their particular needs in mind. Furthermore, the criminal justice system comprises a set of linked elements, each with a unique set of processes. Each element is addressed in the book, so whatever point a person might be at within the system, there is information to assist. The book will also serve as an invaluable resource for disability service providers, helping them to be better informed about the criminal justice system and thereby more effective supports and advocates alongside the person with ABI and their family. Last of all, it can also help staff within the criminal justice system to better understand and appropriately respond to the needs and challenges posed by people with ABI.

Who better to take on the task of pulling the content of this book together than the current authors? Dr Glenn Kelly and Suzanne Brown have developed a deep and extensive clinical experience of the challenges people with ABI face in their daily lives when living in the community. Deidre Griffiths, Hayley Clarke, and Ben von Einem have an intimate knowledge of the challenges faced by people with cognitive impairment (whether congenital or acquired) in navigating the criminal justice system. It is through such collaborations that the challenge of reducing the numbers of people with ABI within the criminal justice system is best addressed. I am sure this book will be an invaluable resource within Victoria and beyond. Hopefully it will be one of a growing number of initiatives that will seek to ensure that people with ABI do not end up in the criminal justice system by default, because human service systems as a whole have not been able to adequately respond to their needs.

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Disclaimer

This guide provides general information. It does not provide legal advice about individual cases. In Victoria, the laws regarding disability and criminal matters can be complex and circumstances will vary from person to person. Always check how the law applies to your individual situation.

Care has been taken to ensure that the information presented here was correct at the time of writing. However, the law changes frequently and information can become out of date. The writers and the publisher will not be held responsible for action taken or not taken as a result of the contents of this book or for any errors or omissions in the information.

Changes to the law

To check for changes to the law you can:

- call Victoria Legal Aid's Legal Help line on 1300 792 387 or visit www.legalaid.vic.gov.au
- call the Federation of Community Legal Centres on 9652 1500 or visit at www.fclc.org.au
- visit the Law Handbook Online at www.lawhandbook.org.au

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The Essentials

If you only read one page of the guide, read this one.

A person who becomes involved in the criminal justice system needs to do two things to start with: get organised and get help.

Get organised

Many people have trouble getting organised, and this is a common problem after ABI. As a legal matter progresses the paperwork builds up. It is important to keep records of everything relevant to a case.

- Buy a folder and hole punch and put all records into the folder.
- Put letters in plastic sleeves if you prefer that.
- Keep the folder somewhere it can be found easily – a 'go-to' spot.
- If there isn't a go-to spot, make one, and get into the habit of using it (e.g. a table where you always leave your keys, mobile phone, charger, wallet, and the legal folder).

Set up a diary

The other thing to organise is a diary or calendar system. This might be a phone-based calendar and reminder system, a wall calendar, or a paper diary.

A wall calendar has the advantage of probably not getting lost. Put it up next to a wall phone (if there is one), and if you make an appointment in a phone conversation, write it down straight away.

Important dates – like a court appearance date – must go straight into the diary.

Get legal help

Don't ignore legal documents – phone or visit a lawyer to get help.

Legal documents (e.g. a **summons**, **subpoena** or **court order**) can be confusing.

What to do, and what not to do, in the legal process can be confusing.

Someone in difficulty with the justice system has a better chance of a good outcome if they have a lawyer's help.

Where to find a **lawyer**: see 'Legal Representation' in Section 3, and the Resources in Section 5.

Checklist

	☑
LAWYER CONTACT DETAILS:	
• *Phone:*	
• *Address:*	
• *email:*	
Folder for records is set up	
Hole punch and document sleeves are ready to use	
Go-to spot for papers set up	
Diary or calendar in easy reach near phone	
IN FOLDER:	
• *List of contacts for regular support network*	
• *List of emergency contacts*	
OTHER:	

1

About this Guide

Organisation of the guide

The 'Essentials' page on p vii, right after the Contents, stresses the two most important things: **get organised**, and **get help.**

The rest of the guide has five main parts:

Section	Topic
1	About this Guide
2	Understanding acquired brain injury (ABI)
3	Understanding the criminal justice system
4	Glossary: what do these words mean?
5	Summary of Resources

Legal words

Terms that may be new to readers are given in **bold**, and explained in the Glossary.

This guide uses the word 'prison' because that is the word used in the justice system. It means the same as gaol (or jail).

Information in the guide

People with acquired brain injury (ABI) often have difficulty accessing information about their rights and their legal situation. This guide deals with the rights of people with ABI involved in the justice system – especially the criminal justice system – and the resources available to them.

People with ABI who are aware of their rights will be in a better position to be dealt with fairly as they move through the criminal justice system.

The guide provides information and practical tips about dealing with:

- Police
- Lawyers
- Courts
- Sentencing options
- Prison
- Community corrections.

The names of services that can help with ABI and legal supports are included throughout the guide. Contact details are given at the back of the guide, in Section 5.

Who is the guide for?

This guide was written to help people with an ABI and their support networks when they come into contact with the justice system. By 'support networks' we mean those who work in disability and justice services, and the family and friends of people with ABI.

The guide focuses on adults with ABI and the criminal justice system. We hope people with ABI, particularly strong self-advocates, will use these resources to assist their passage through the justice system. Juvenile justice is beyond the scope of the guide, but much of the content will be helpful for any age group.

Many sections of the guide are laid out as single pages to be copied and given to those who need them.

Understanding ABI

The Basics

What are the causes of ABI?

Acquired brain injury (ABI) refers to any type of injury to the brain that happens after birth.

ABI can be caused by:

- Traumatic brain injury (e.g., trauma from a fall, car accident, assault)
- Stroke (a bleed or blockage of blood vessels in the brain)
- Tumour (abnormal cells that affect brain tissue)
- Hypoxia (lack of oxygen to the brain - e.g., choking, heart attack)
- Alcohol-related brain injury (long-term heavy use of alcohol)
- Infection (bacteria or a virus can infect the brain - e.g., meningitis)
- Epilepsy (epileptic seizures or 'fits')
- Progressive neurological conditions (e.g. Alzheimer's disease, Parkinson's disease, multiple sclerosis)

ABI can have a sudden or gradual onset. Examples of a sudden onset include when a person has a stroke or a traumatic blow to the head, or a drug overdose causes them to stop breathing. The lack of oxygen to the brain can result in a severe and permanent injury.

Examples of a gradual onset are a slow-growing brain tumour, or a progressive condition that leads to dementia, or a person has been abusing alcohol over 10-years or more.

The term 'ABI' is often interchanged with other related terms:

- TBI (Traumatic Brain Injury)
- BI (Brain Injury)
- BD (Brain Damage)
- HI (Head Injury)

People with ABI who have poor insight can misjudge a situation, and may not realise what help they need. They may readily decline assistance or services that seem to others to be helpful.

What are the effects of ABI?

The effects of a brain injury vary greatly from person to person depending on individual differences, the cause and severity of injury, what part of the brain has been involved, and how much damage there has been.

People with ABI may have difficulties in a few, or many, of the following areas:

Physical difficulties

- balance, coordination, strength, movement and mobility
- increased muscle tone, stiffness, contractures
- fatigue - extreme tiredness after physical and mental effort
- incontinence - bowel and bladder problems

Sensory difficulties

- blurred or double vision, reduced visual field, more sensitive to light
- ringing in the ears, reduced hearing, more sensitive to noise
- reduced sense of taste and smell
- pain, headaches, dizziness, numbness, tingling or altered sensation

Language difficulties

- slurred speech, controlling volume or rate of speech
- comprehension - understanding what others say, reading
- expression - saying the right word, speaking in sentences, writing

Cognitive difficulties

- thinking is slower and more effortful
- concentration – can't attend to things for long, get distracted easily
- memory – trouble remembering things and learning new information
- executive skills – planning, reasoning, problem solving, self monitoring

Emotional difficulties

- mood swings, crying unexpectedly, laughing at things that are not funny, low frustration tolerance, over reacting to trivial things
- reduced empathy for others' feelings, misinterpreting emotions
- increased feelings of anger, stress, anxiety and depression

Behavioural difficulties

- impulsive – acting without thinking of the consequences
- inappropriate – saying or doing the wrong thing in social situations, tactless, lack of inhibitions, sexual misconduct
- adynamia – reduced drive and initiative (may appear 'lazy')
- aggression – irritable, outbursts, verbal abuse, physical violence

The hidden disability

ABI is sometimes referred to as the 'hidden disability' because many people with an ABI do not have obvious physical impairments. They may walk without difficulty or communicate well socially.

But they may have problems with thinking, emotions, or behaviour – things that are not immediately apparent to other people. These kinds of problems do become familiar to those who see the person often, like workmates, family members, and experienced service providers.

Because it may not be obvious that a person has ABI, the disability can easily be missed, explanations of their behaviour can be misguided, and the person may not be provided the supports they need.

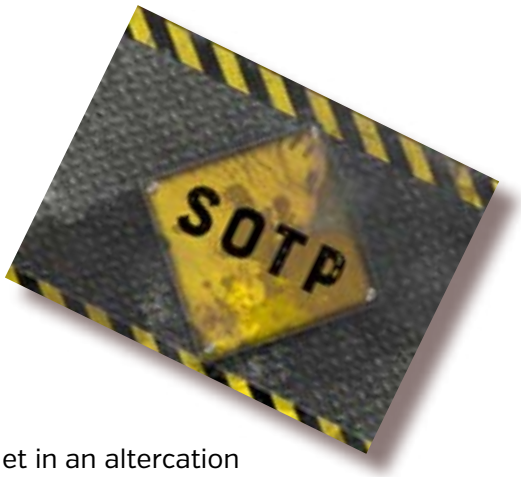
Noticing signs

When working with someone with ABI, their presentation can tell you a lot about thinking and behaviour problems. Does the person:

- forget what you have been working on from meeting to meeting
- get easily overloaded with information
- fail to follow up on important tasks (even if they can explain what they need to do)
- fail to attend meetings or hearings (even if they are important)
- have difficulty getting their appointments and documents organised

There is more information below about what to do if you suspect you are working with someone with a brain injury.

ABI in the criminal justice system



The cognitive-behavioural difficulties (problems with thinking and behaving) that commonly follow ABI are often poorly understood, and can increase the chances that a person comes in contact with the law.

These are some examples of how disability-related issues can lead to legal intervention.

- Someone with ABI who is unsteady on their feet (ataxia) or has slurred speech (dysarthria) might be mistaken to be drunk or drug-affected. The person may be refused entry to venues and get in an altercation with security, or draw the attention of the police by simply walking down the street.
- After an ABI a person may have trouble with bladder control, may be impulsive and disinhibited, and lack the ability to consider the consequences of their behaviour. An act of urinating in public may be viewed as anti-social or drunk and disorderly. The person may be charged with offensive behaviour.
- A person who has problems with memory and self-monitoring may put an item in their bag when shopping and forget to pay for it at the checkout. They may be apprehended when they leave the store, and charged with theft.
- A person with difficulties planning and organising may fail to attend to important things like paying bills and fines, or sticking to parole conditions. They might be interpreted as deliberately being difficult, and risk increased penalties.
- A person with poor insight into their disability or the seriousness of their predicament might tell police that they don't need any help or representation in a police interview. As a result, they miss out on advocacy or legal supports.
- In a police interview, a person with ABI may become overwhelmed by 'too many' questions. The person might become confused and react emotionally or aggressively. Without appreciating the cognitive limitations, the police may view the person as difficult or hostile.

These difficulties can create a cycle where a person is charged, convicted and sentenced, rather than treated, rehabilitated and supported in the community.

A recurring dilemma is deciding whether legal problems like these are better managed by the health service system or the justice system.

ABI is over-represented in prison

People with ABI are vastly overrepresented in the criminal justice system.

In Australia, it is estimated that about 2% of the general population have ABI. In contrast, the percentage of people with ABI in the criminal justice system is much greater. Recent Australian research has found that about 40% of males in prison have ABI, and about 30% of females in prison have ABI. Some international research suggests that the prevalence rates of ABI in prisons could be as high as 60–90%.

Having an ABI is associated with:

- more frequent conviction
- longer periods of incarceration
- minor offences
- high rates of re-offending (recidivism).

Sentencing and restorative justice

Complex situations as described above are not quickly or easily 'fixed'. Nevertheless, there is an increasing awareness that the cognitive and behavioural effects of ABI contribute to crime. And that, rather than imprison an offender who has a disability, there will be cases in which providing disability and health supports will reduce or prevent future offending.

Sentencing has five purposes: punishment, deterrence, rehabilitation, denunciation of the type of conduct, community protection, or a combination of two or more of those purposes.

Restorative justice is an approach to justice that focuses on the needs of the victims and the offenders, as well as the involved community – instead of only satisfying abstract legal principles or punishing the offender. Victims take an active role in the process, while offenders are encouraged to take responsibility for their actions, to repair the harm they have done – for example by apologising, returning stolen property, or doing community service. Mediations can be held where the offender and the victim meet and discuss the offence and the impact that it has had on the victim. The process can provide help for the offender in order to avoid future offences.

Case example: Mike

This a true story about the pathway of a person with ABI moving through the justice system – from police to the Magistrates' Court and into prison. Some identifying details have been altered. The client gave permission for use of this description.

The alleged offence

Police charged Mike with driving while disqualified and with drink driving. His blood alcohol level was .053. At the time, Mike was serving a suspended sentence for similar offences. This time, he was in the passenger seat when he was arrested, and police said he switched seats with the passenger, Jim, who was behind the wheel when Mike was arrested. Jim also had a history of similar offences, but he was not arrested.

Missed hearing and arrest

Approximately 5 months later, Mike failed to appear in Court on the due date to face charges, so a warrant for his arrest was issued. At this point Mike's case manager, Chris, was notified of the original arrest. Chris went with Mike to the police station, where bail was issued. The police denied knowledge of Mike's ABI, although Mike had been to court several times, and had been interviewed by police.

Court finding

Mike appeared in a Magistrates' Court in rural Victoria and pleaded not guilty to the charges. The police informant was not available on the day, so the case was adjourned for a few months.

A different Magistrate heard the case when it came back to court. Mike disagreed with the account given by the police informant. The Magistrate noted that Mike had breached his suspended sentence, and adjourned the case again to await further medical evidence about his condition. The case was then transferred to a different court approximately 3 hours' drive from Mike's house.

Chris arranged for Mike to complete assessments with a neurologist and a neuropsychologist. Mike's lawyer presented their recommendations to the Court: the reports noted Mike's level of disability and recommended that if the Court found him guilty, it should consider sentencing him with community service because a prison term could be harmful to his mental health and probably would not help with his rehabilitation.

The Magistrate sentenced Mike to 3 months in prison and a 12-month Community Order after his release. He was taken into custody immediately. Mike didn't have his epilepsy medication with him, and the Magistrate was told this.

Prison

Chris got permission to visit Mike in Melbourne Assessment Prison, but on the day of the visit, Mike was transferred to a different prison, and no one told Chris, although he was Mike's case manager. When Chris went to see Mike in the next prison, Mike said he'd had seizures in custody. He also described his fears and lack of sleep due to sharing a cell with a person charged with murder.

Mike was later transferred to a lower-security prison. Chris thought he seemed more settled, and he said he was feeling safer. Chris started discharge planning with the prison caseworker.

Community corrections

Mike completed his 3 months in custody and then started the 12-month community order. It required him to attend regular appointments with a Community Corrections officer and go to drug and alcohol counselling. Mike breached this order by missing appointments.

Chris worked with the Community Corrections officer on the problems presented by Mike's cognitive impairment, and devised memory and adherence strategies. Mike ultimately completed the Order.

In review

Mike's case is an example of the way cognitive problems (impaired memory, recall, and organisation, limited learning from past similar experiences) contribute to poor outcomes, and shows how the health and justice systems can contribute to outcomes, for better or worse. An increased knowledge of service systems can help professionals get better outcomes for their clients and services.

Mike was known to have problems with his memory and organisation, so there was a high proability that he would fail to appear in court. But it was only after Mike's failure to appear, when he was arrrested, that Chris was informed. Proactive support from case managers or other support networks would help organise Mike and others in the same situation. A protocol to inform case managers of pending client cases would increase adherence to Court hearings.

Mike did not have an Independent Third Person (ITP) present at his police interview, but he had used ITPs in the past. This time, he had recall problems and didn't request one. His 'hidden disability' perhaps caused the police to fail to call in an ITP for him. Once Chris found out what had happened, he requested that police have an ITP attend any future police interviews, and that Mike's disability status be put on file for future reference.

Mike's case should arguably have been heard at the Koori Court he had previously attended, where his ABI-related issues were known. The lawyer did argue for a Koori Court hearing, but was unable to influence the Court ruling.

Mike experienced seizures in prison. These were normally well controlled by his medication, but Mike forgot to take it to Court. An informed support network could help him manage this better in future – see 'Tip sheet for Court' in the section 'Going to Court' below.

Upon release from prison, Mike breached his corrections order by failing to appear at appointments. Collaborative work between case management and Community Corrections involved organisation and memory supports for Mike, which increased adherence to the conditions of his order.

Some ways you can help a client with an ABI

Write down key points in a meeting so that the client has a record

- *Make sure the client puts important events and tasks in their diary*
- *Check that the client has understood what you have discussed*
- *Take a break from discussions if the client seems overwhelmed*
- *Speak calmly and in concrete terms, and avoid treating the person like a child*
- *Arrange for someone to remind the client about meetings, hearings, and the like, and also to collect and take them to those events.*

Myths and misunderstandings

Misunderstandings about ABI and the law contribute to poor outcomes.

Myth 1: 'I won't be convicted because I have an ABI'

This is not correct. People with ABI do get convicted for breaking the law, and are penalised, fined or sent to prison. About 40% of people in Victorian prisons have ABI. If you have committed a crime you should not assume you will be 'let off' because you have an ABI. However, having an ABI may affect what happens in your case because it may be seen as a 'mitigating factor'. You may get special consideration from the Court, access to helpful services, or different sentence options. Speak to a lawyer about your disability and how this affects your case.

Myth 2: 'Mild' brain injuries don't cause long-term disability

This is not correct. The term 'mild brain injury' often comes up in legal matters and can cause confusion. The words 'mild', 'moderate', 'severe' and 'very severe' describe how long a person was unconscious for, and how long they were in post-traumatic amnesia. It does not refer to how serious the ongoing symptoms are. A small percentage of people with 'mild' ABI do experience long-lasting debilitating effects, such as dizziness, headaches, slowed thinking, poor concentration, and memory difficulties. It is also common for people with mild ABI to report symptoms of anxiety and depression.

Myth 3: 'Normal' IQ means intact cognitive skills

This is not correct and can be misleading to the Court. If a person's overall intelligence quotient (IQ) falls in the average ('normal') range on psychological testing, it does not necessarily mean the person has no cognitive difficulties. Better performance (higher scoring) in some thinking areas can 'balance out' poorer performance in other areas. Assessment by a neuropsychologist (specialist in brain injury) may reveal specific areas of strength (e.g., verbal skills) and also specific areas of difficulty (e.g., learning new information, remembering things, organising the day) and provide ideas for managing the difficulties.

Myth 4: Recovery will plateau or stop after two years

The course of recovery after ABI can be difficult to predict. Recovery is not a linear course and even those with similar injuries can have different recoveries. How well a person does depends on many factors, such as the nature of the injury, their personal strengths, rehabilitation they receive, and ongoing supports and resources. People can continue to make gains many years after ABI when they are given the right supports and opportunities. Adjustment is an ongoing process.

Information for support networks

'Support networks' here refers to family members, friends, and service providers – lawyers, case managers, social workers, allied health clinicians, post-release workers, and mental health workers.

Asking about brain injury

These are some questions that might help you determine whether brain injury and cognitive difficulties affect the person you're working with.

1. Have you ever been diagnosed with a brain injury or ABI?
2. Have you ever been knocked unconscious, or had an injury to your head? Think about childhood and adulthood. You might have had to go to hospital.
3. Have you ever had a stroke?
4. Have you ever had a drug overdose?
5. Do you drink alcohol? How much? How often? How old were you when you started drinking?
6. Do you have trouble remembering things or concentrating?
7. Do you have a case manager or some other professional who helps you?

These questions are not to diagnose the client. If the client reports evidence of cognitive difficulties, and you need more information, refer the client to their GP to arrange further evaluation such as a neuropsychology assessment.

Neuropsychology assessment

A neuropsychology assessment involves investigation of a client's history, a face-to-face interview, and a range of tasks designed to assess a person's strengths and weaknesses in speed of thinking, attention, memory, new learning, planning, reasoning and problem solving.

Neuropsychology assessments are typically used to:

- diagnose the presence, type or severity of brain injury
- understand a person's current strengths and weaknesses and provide advice on support and rehabilitation
- inform a behaviour support plan
- help determine someone's capacity to make reasoned informed decisions (such as decisions about their accommodation, health or spending).

Referrals can be made directly to neuropsychologists -- that is, you don't need a referral from a General Practitioner (GP).

Note that some services have government funding to do neuropsychology assessments, so the cost to the client may be low or zero. These services can have long wait lists.

Also note that neuropsychologists may focus on certain areas in their practice (e.g., dementia). You will need to be clear with them at the point of referral about what you need, and check whether they have experience dealing with criminal justice issues if these are core problems.

Accessing neuropsychology services in Victoria

- Ask a GP for a referral to a neuropsychologist
- Use the 'Find a Psychologist' feature of the Australian Psychological Society website.

Australian Psychological Society

www.psychology.org.au

Osborn Sloan and Associates

Tel: 9853 2638

Website: www.osbornsloan.com.au

Melbourne Neuropsychology Services

Tel: 9416 4854

Website: www.melbourneneuropsychology.com.au

Arbias

Tel: 8388 1222

Website: www.arbias.org.au

Diverge psychology services

Tel: 9329 4330

Website: www.diverge.org.au

Identification

ID card

Some people with ABI carry a small card that identifies them as having a brain injury or details the specific impairment. This enables them to present the card to police, security, or public transport staff, to explain the nature of their disability so as to avoid misinterpretation of their behaviour. For example, being unable to communicate verbally, or difficulty controlling emotions.

'I have an ABI'

Many people who have experienced a brain injury are sensitive to the stigma of having a disability. Support networks may need to tread carefully when discussing these issues.

There are advantages and disadvantages of declaring an ABI.

Advantages

- *People may recognise hidden difficulties, and make allowances*
- *Police conducting interviews are then able to contact an Independent Third Person*
- *Lawyers could use this as a mitigating factor in a defence argument*
- *Health workers can then refer a person into treatment or services*

Disadvantages

- *Embarrassment*
- *Stigma of disability*
- *Being subjected to other peoples' assumptions of what 'ABI' means*

It is important that the person with an ABI discuss their condition with a lawyer. It might make a large difference to the pathway taken through the justice system.

A draft script for lawyers

Here is a possible script lawyers might use when discussing this with clients:

> *'From what you've told me, it sounds like (that accident) has had a big impact on you. It also sounds like it has contributed to this legal problem you have.*
>
> *From my position, as your lawyer, I could argue that your injury is partly to blame for this crime. That could get you a better outcome.*
>
> *I could also argue that you actually need some help with managing.....and we could try to get that help.*
>
> *What do you think about that?*
>
> *I understand you feel embarrassed. It might help to know that many of my clients have had injuries to their heads. My view is that you stand a better chance of a good outcome if we accept you might be injured, than if we ignore it.*
>
> *OK; as I organise your case, is it all right if I do some more work around this possible brain injury? I'll try to get those hospital reports and might need to organise an expert opinion.'*

Law Enforcement Assistance Program (LEAP)

Victoria Police operates the Law Enforcement Assistance Program (LEAP) – a database that stores information about people and crimes, and also has a 'Person Warning Flag'. Police can use the database to look up a person they come in contact with. It can help police to know that a person has an ABI, what to expect and how to respond. An individual, their parent or legal guardian can provide information to police for reference on the system. Making an entry can be initiated by visiting a local police branch to discuss.

Brain injury is not intellectual disability or mental illness

Intellectual disability (ID), by definition, means that a person has a low IQ and difficulties with adaptive living skills. An ID must be diagnosed before 18 years of age, and the person will probably be registered as a client of the Victorian Department of Health and Human Services, or, in some parts of Victoria, the National Disability Insurance Scheme (NDIS). The person may have received various state-based services throughout their life. Many services and programs exist for offenders with ID.

Mental illness (MI) refers to many different conditions such as mood disorders (e.g., depression, bipolar disorder), anxiety disorders (e.g., panic attack, posttraumatic stress disorder), and psychotic disorders (e.g., schizophrenia). Mental illness can be episodic with periods of good health between episodes, and an illness might cease entirely after an episode.

Acquired Brain injury (ABI) is characterised by changes to someone's thinking and behaviour. A person may have average intelligence, but have problems with such things as impulsivity, fatigue, communication (talking and/or understanding), attention, memory, or problem solving. The person may be able to understand a legal predicament when it is explained, but fail to recall that on a later date. The person might be quick to anger, and not be able to self manage when in a court environment.

Comorbidity refers to a person having two or more conditions at the same time. Examples include a person with an ABI who also has a MI, and a person with an ID who also has an ABI. Some people have all three of these conditions. Another common comorbidity is having both drug and alcohol problems, which can occur with any of ABI, ID, and MI.

People with multiple diagnoses may be eligible for services from multiple service systems. But it is also the case that these people may 'fall through the gaps' if each service system considers the person someone else's responsibility. In this case support networks and the individual need to advocate strongly to identify the lead agency.

Resources for ABI

This is a brief list of resources that will help you find more detailed information about brain injury.

Acquired Brain Injury: The Facts

A practical guide to understanding and responding to Acquired Brain Injury and Challenging Behaviours (fourth edn).

Website: synapse.org.au

ABI Information Kit

Developed in Victoria and available for download at no cost. The kit consists of the following booklets:

- *Changed Lives information booklet about acquired brain injury*
- *Children & Young People with ABI - A Case Managers Guide*
- *Your Guide to Mental Health and ABI*
- *Your Guide to Managing Behaviour after ABI*
- *Your Guide to Neuropsychological Assessments*
- *Your Guide to Glossary of Terms - Brain Injury*
- *Your Guide to Statewide Services - Resource Booklet*

Website: brainlink.org.au

Fact sheets

Website: synapse.org.au

Service Finder (for finding ABI services in Victoria)

Website: brainlink.org.au

Vacro Booklets

Preparing for a criminal hearing – ***Families in Waiting*** (2014).

Provides practical advice for families preparing for a Court hearing. Includes tips on preparation, transport, Court expectations, finances, medications.

Caught Out: What Now? series

A series of booklets and fact sheets for families of offenders

Caught Out: What Now?

General information for understanding the Victorian criminal justice system.

Keeping in Contact

Coping with incarceration, and how to maintain relationships with someone in prison.

Children of Prisoners

Understanding how incarceration affects children

Reintegration.

Preparing for release from prison and community reintegration

Website: www.vacro.org.au

Training

Training in ABI is available from several public and private services. In regional Victoria there are ABI Information, Training and Secondary Consultation (ITASC) projects. ITASC staff can help individuals and agencies find the kind of training they need. These projects are listed below. Also listed are agencies that supply training in various areas of Victoria.

Make sure that the people you book to deliver training are highly qualified and appropriately experienced to do the job you need.

ITASC Barwon Southwest
Tel: 4215 5456

ITASC Grampians
Tel: 5320 3612

ITASC Hume
Tel: 02 6051 5705

ITASC Loddon Mallee
Tel: 5454 7849

ITASC Gippsland
Tel: 5136 5293

Arbias
Tel: 8388 1222

Website: www.arbias.org.au

Diverge psychology services
Tel: 9329 4330

Website: www.diverge.org.au

The Bouverie Centre
Tel: 9385 5100

Website: www.bouverie.org.au

CBDATS
Tel: 9490 7366

Website: www.austin.org.au/bdp/bdpcs

Understanding the Criminal Justice System

Police

Speaking with police

Telling police about having an ABI

Police will not necessarily know that you have an ABI.

You should consider telling the police you have an ABI because:

- the police have to do certain things to protect your rights
- you are allowed to have someone present to help you in police interviews
- it could help your case and assist with your defence
- it could help reduce your sentence or give more sentencing options

If you can't tell the police yourself, you can ask someone else to do it for you, like a friend, relative, doctor, health worker, case manager, advocate, lawyer or guardian.

In trouble with the Police?

Get legal advice

If you are in trouble with the police, you should seek legal advice as soon as possible. Read **Where to find a lawyer** in Section 5.

Health workers need to get consent

Health workers should obtain the person's consent prior to contacting police. This is in line with privacy laws and ethical guidelines on confidentiality.

Only in cases where there is serious and imminent risk of harm to the person or others would it be permissible for confidentiality to be breached.

Police questions: What you need to answer

The police have a right to ask for your name and address in many situations. For example, when:

- you are reasonably suspected of committing an offence
- you may be able to assist in the investigation of a serious offence or act of domestic violence
- you are given an order to stop making noise or being a nuisance
- you are in control of a vehicle stopped on a road.

Under these circumstances, you should give your name and address to police or you will be committing an offence and you could be charged.

Police can ask for proof of your identity (e.g., a driving licence).

If the police ask more questions, you don't have to answer them and you have the right to ask for a lawyer.

Questions you can ask the police

You have the right to ask police why you are being questioned.

You have the right to ask a the police officer to give their:

- name
- rank
- police station (where they work).

If the police officers are not in uniform, you can ask for proof of their identity.

If you are stopped and questioned by police, it is suggested that you:

- tell the police your name and address
- check the identity of the officer and ask why they want your details
- politely say that you are not willing to answer other questions
- ask to speak to a lawyer
- if you are under 18 years of age, tell the officer.

Remembering and taking notes

When you have a conversation with police, you should make a note of it.

Write down, or use your phone voice recorder, to help you remember key things: the police officer's name, the names of any witnesses, things police said to you, anything you need to do next.

Common interactions with police

People with ABI are often involved in minor altercations with police that can escalate into more serious issues if not well managed. Examples of this are creating a disturbance in a public place or making too much noise. These often don't lead to arrest or charges, but could lead to trouble if police instructions are not followed.

Being told to 'move on' in a public place

Police can order people to leave certain areas like shops, malls, schools, pubs, gambling venues, and railway stations if their behaviour is disorderly, indecent, offensive or threatening. Examples are loitering (hanging around for no reason), begging, hassling shopkeepers or their customers, or disrupting an event or gathering.

The term for this is to 'move on' from a 'prescribed place', the direction can last for up to 24 hours, and police must provide a reason for moving someone on.

If you are told to move on:

- *don't argue.*

Instead you should:

- *ask why you are being moved on*
- *stay away from the 'prescribed place'*
- *record the names of any witnesses to the incident*
- *record the name, rank and station of the police officer giving the direction.*

If someone refuses to move on, they may be charged with failing to obey a police direction and arrested, and the Court could impose a fine (this may be thousands of dollars).

If a person believes that being moved on was not reasonable or fair a complaint can be made with the help of a community legal centre.

Not enough to do

Often, problems with loitering and public nuisance behaviour arise when someone has too little meaningful activity. Service providers and family members can set clear boundaries and work on structuring the person's daily timetable with a range of other things to do. Look at what service options might be available to provide structure, support, and supervision. Seek help with disability support or behaviour management from specialist services.

Being told to 'turn down the noise'

Police can direct people to 'turn down the noise' if they are making too much noise and it is affecting people in homes or workplaces nearby. The noise might be from tools, musical instruments, stereos, or a party.

The direction to stop making excessive noise is called a *noise abatement direction*. Police do not need a warrant to enter someone's home and give them this direction.

If police make this direction, a person should stop making excessive noise immediately, and keep it that way for 12 hours (that's how long the direction lasts).

If the noise doesn't stop the police can come back and take more serious action. They can take away whatever is making the noise (like a guitar or amplifier) or lock it up, or make it inoperable. This equipment ban lasts for 24 hours.

If someone still keeps making noise, they can be fined up to $1,000.

SEARCH WARRANT

Magistrates' Court Act 1989 - Section 57, 75 - 78

OCCUPIER COPY

Court Ref.:

Name and/or description of person or article, thing or material

***Place/*Vehicle located in a public place where search will be conducted for article, thing or material**

*Number and name of street and suburb

*Identifying details of vehicle

Reason for search or description of suspected offence

This warrant authorises:

Name, Rank and Reg. No.

of

Station and Address

Or all members of the police force:

☐ **Search for a person**

- to break, enter and search any place where the person named or described in this warrant is suspected to be;

AND

- to arrest the person named or described in this warrant.

☐ **Search for any article, thing or material of any kind**

- to break, enter and search any *place/*specified vehicle located in a public place named or described in this warrant for any article, thing or material of any kind named or described in this warrant;

AND

- to bring the article, thing or material before the Court so that the matter may be dealt with according to law;

AND

- to arrest any person apparently having possession, custody or control of the article, thing or material.

If a person is arrested

You must also cause the person named or described in the warrant, or apparently having possession, custody or control of any article, thing or material named or described in the warrant, when arrested:

☐ to be brought before a bail justice or the Court as soon as practicable to be dealt with according to law; OR

☐ to be released on bail in accordance with the endorsement on this warrant.

This warrant is authorised by of the .

Issued at *(place)* at *(time)* *am / pm on *(date)*

Signature: by Magistrate: *(name)*

*Strike out whichever is not applicable

Being searched

Police can search you or your car if they reasonably suspect:

- they will find illegal drugs, weapons or stolen goods
- there is evidence they need to preserve.

For any other purpose they will need a search warrant.

Police can search a house without a **warrant** if they believe they will find someone:

- who has committed a serious crime or
- who has escaped custody.

For any other purpose they will need a search warrant. If police come to your house to search, ask to see the warrant.

Going to the police station

The police may ask you to go to the police station for questioning.

You do not have to go to a police station against your will unless you have been arrested (taken into custody) and police have told you what you were arrested for.

Police interviews

Police may want to interview you if they think that you have committed a crime, been the victim of a crime, or witnessed a crime.

Being interviewed does not mean you've been arrested – it just means that the police want more information.

You can be interviewed just about anywhere: on the street, at your home, in the police car, or at the police station.

There is no such thing as an 'off-the-record' conversation with police. Anything you say can be presented in Court and may be used against you if you are suspected of breaking the law.

Police interviews

DO give your name and address, but DON'T discuss other things until you have talked with a lawyer.

A caution

The police officer must inform you of your rights before they begin the interview. This is called a 'caution'. The officer will say something like:

> *I must inform you that you do not have to say or do anything, but anything you say or do may be given in evidence.*
>
> *Do you understand that?*
>
> *I must also inform you of the following rights.*
>
> *You may communicate with or attempt to communicate with a friend or a relative to inform that person of your whereabouts.*
>
> *You may communicate with or attempt to communicate with a legal practitioner (a lawyer).*

Seek assistance

It is a person's right to have assistance in an interview.

- You have the right to contact a lawyer and have a lawyer present at your interview with the police
- You have the right to contact a friend, relative, or a support worker (e.g. your case manager) to be present with you at the police interview.
- Friends and relatives don't always know the law, and probably cannot defend you like a lawyer can. You may damage your own defence by answering police questions before speaking with a lawyer.
- You can also ask for an Independent Third Person (ITP) to be present at the interview to take into account your disability and help explain things to you.

Independent Third Persons (ITPs)

If someone with an ABI is to be interviewed by police, they can request to have an ITP in the interview with them.

An ITP is a volunteer worker trained by the Office of the Public Advocate (OPA) to know about disability, cognitive impairment and communication issues.

The ITP is independent and objective, familiar with police processes, and can help a person to understand their rights. An ITP is not a lawyer and won't give legal advice.

The ITP's role is to assist with communication. They can help you to understand what the police say to you, and help the police understand what you say.

If you are anxious or upset, the ITP can talk with you and help you calm down, request a break, and slow things down so things don't get out of control.

ITPs are available across Victoria. Police have a list of trained ITPs. The police have a responsibility to phone an ITP and ask them to attend.

Ask to speak with the ITP in private before the interview so you can discuss your rights. Let the ITP know you want to speak with a lawyer before the interview.

OPA website: www.publicadvocate.vic.gov.au

'Fit for Interview'

Some people are considered 'not fit for interview' mainly because they cannot fully understand why they are in trouble or how to instruct their lawyer. Police can arrange for a Forensic Medical Officer to assess whether or not someone is able to participate in a police interview.

Recording Police interviews

Police are required to record interviews about indictable (serious) offences.

The police may use this recorded information as evidence in Court. The police must give you a copy of the interview. If they don't, you should ask for it. This copy is important for your lawyer.

Interpreters

If you do not speak or understand English very well, you can get a qualified interpreter for a police interview. The police will organise an interpreter if they realise you need one, or you can request one. Other assisted communication is also available (e.g. for AUSLAN).

How long can you be held?

The police can hold you for questioning for a 'reasonable' amount of time before they have to let you out on bail or take you to Court. What is considered reasonable depends on many things – your lawyer can argue about whether you've been held too long.

Saying 'no comment'

During a police interview, you must tell the police your name and address, but you do not have to say anything else until you get advice from your legal representative (a lawyer).

You can use your right to silence by saying 'no comment' to every question.

When being arrested

You have to go with the police.

The police can use 'reasonable force' when they arrest you.

If you try to stop them arresting you, they may use greater force (e.g., handcuffs, physical restraint).

You may be charged with resisting arrest if you refuse to cooperate, run away or try to fight them off.

Arrest

If the police think you've broken the law, they can arrest you. That means that they hold you in custody (e.g., at the police station) and you are not free to leave.

Know for certain whether you've been arrested:

- ask the police if you are under arrest
- ask the police what you have been arrested for.

If you are arrested

The police are allowed to:

- take you to a police station
- request a police doctor (Forensic Medical Officer) assess whether you are fit for questioning
- keep you at the police station while they conduct further investigations
- take your fingerprints
- take a photo of you
- give you a breathalyser or drug test if you were driving
- take body samples if a Court orders you to undergo a forensic procedure (e.g., giving a blood or saliva sample).
- ask a person to participate in an identification line up
- formally interview a person and record the interview.

A person arrested is allowed to:

- remain silent (other than giving their name and address)
- contact a lawyer, relative or support person
- ask for some water and something to eat
- ask for a blanket if feeling cold
- tell the police if they are feeling distressed or unwell
- request medication or the police doctor
- tell police if their disability or medication is making it difficult to concentrate, remember, or stay alert
- ask for a break.

Possible outcomes from police arrest

After a person is arrested, they may be:

- released from custody without charge
- released from custody but **charged** later (given a summons)
- charged, but released from custody on **summons** to appear at Court
- charged, but released on **bail** by a magistrate or police sergeant
- charged and remanded (held) in custody until the Court date.

The Court date will be on the summons or charge sheet. A person who is kept in custody needs to talk to a lawyer about applying for bail.

Medical help and medications in police cells

- Many people with ABI take medications for things like seizures and mood problems, as well as other general health issues.
- Often, people need medications while in custody.
- Tell the police officer-in-charge if you need to see a doctor or take medication while you are in custody.
- The Victoria Police Custodial Health Services provides medical, pharmacy and nursing services to prisoners in police custody 24 hours a day.
- Keep the contact details of your doctor in your wallet or purse so that the Custodial Health Services can contact them more easily.

Charges

A criminal **charge** is laid when police formally accuse you of committing an offence. This means the police believe you have broken the law and will force you to go to Court to answer the charge or charges.

A **charge sheet** is a document that lists all the offences the police have charged you with. An example is shown opposite.

Summons

A **summons** is a legal document, issued by a Court, telling you that you must go to Court on a specified date.

Never ignore a summons.

A summons is usually a blue sheet of paper that lists the charges against you and the date of your Court hearing. An example is shown on page 33.

CHARGE - SHEET AND SUMMONS

Accused Copy - Bring this with you to Court

Magistrates' Court Criminal Procedure Rules 2009 Form 3 Rule 11

TO THE ACCUSED	Unsuitable Dates: Nil Unsuitable Dates
	Preferred Dates: Nil Preferred Dates
, VIC	M ☐ F ☐ Co ☐ — Date of Birth
You have been charged with an offence against the law. Read these pages to see what you must do	Registration No. — State VIC
MNI / JAID:	Licence No. — State VIC

Details of the charge against you

What is the charge? 1

Under what law?	☐ State ☐ Act ☐ Other - Specify ☐ C'Wealth ☐ Reg	Act or Regulation No.	Section/Clause (Full Ref.)
Type of Offence	☐ **Summary Offence** (You **should** go to Court)	☐ **Indictable Offence** (You **must** go to Court)	
Request for Committal Proceeding	☐ No ☐ Yes		
Are there more charges?	☐ No ☐ Yes - see "Continuation of Charges" attached		
Informant		Phone No:	
Agency and Address	, VIC.		
Email		Fax	
Informant Signature		Date	

Where will the case be heard

Where you must go	The ☐ Magistrates' / ☐ Children's Court of Victoria at			
Address				Phone No
When	Time	Day	Month	Year

Details about this summons ☐ **S 14**

Issued at:		Date	
Issued by:	Signature	☐ Registrar ☐ Magistrate ☑ Police Informant	
Charge Filed at		by (member)	Emp No
Method of Filing		Date	

Being in custody

If police take you into custody you are under arrest and not free to leave. You might be kept in police cells at the watch house or detained in prison.

If you can get bail you will be released, otherwise you will remain in custody until you go before the court for a hearing.

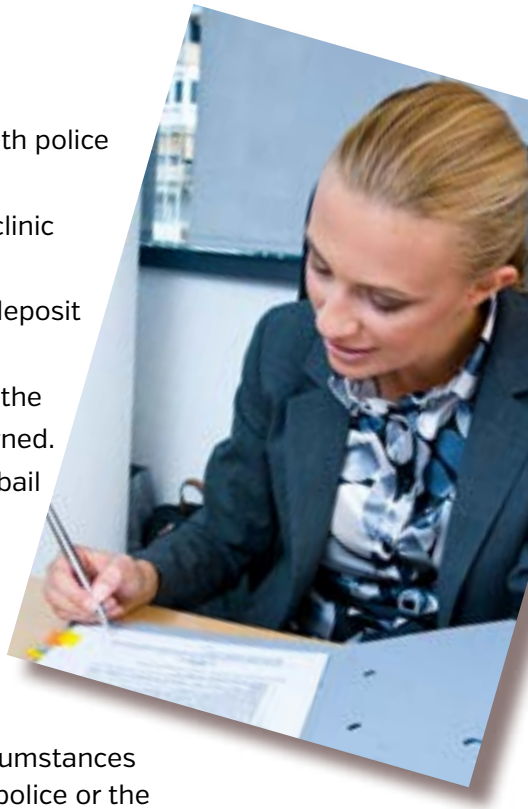
Bail

What is bail?

- Bail is when police release you from custody on the condition that you will go to Court at a later date to face charges.
- Before you are released from custody, you will have to agree to the conditions of bail and sign a form to say you agree. Those conditions will be on a copy of the bail form that you receive.

Bail conditions

- Being bailed on your 'own undertaking' means that you agree to appear in Court at the date, time and place specified.
- Bail will always include the condition to appear in Court. Sometimes this will be the only condition.
- Sometimes the police or a Court will set other bail conditions such as:
  - depositing money or other assets with police or the Courts. This is called putting up bail money. The Court sets the amount of bail money required
  - having to report to a police station on set days
  - abiding by a curfew]
  - not contacting specified people or interfering with police witnesses
  - receiving treatment from a doctor, therapist or clinic
  - not re-offending while on bail.
- Another person, like a family member or friend, can deposit money or assets to cover bail. This is called a **surety**.
- After the accused person has appeared in Court and the matter is finalised, the bail money or property is returned.
- If the accused person does not turn up to Court, the bail money or property will not be returned.



Not agreeing to accept bail conditions

If an accused person cannot meet bail conditions due to circumstances beyond their control, then they need to tell their lawyer, the police or the Court. For example, if a condition was to report to police daily, but the

accused lived a long way from the police station, couldn't afford daily taxis, and had no other way of getting to the police station, they could object to the bail conditions. A Court can review the bail conditions.

If there has been a change in someone's circumstances, they can apply to the Court to vary the bail conditions. For example, if someone relocates and can't get to the specified police station, they can apply to go to a different police station nearer to their new home.

Breaking the conditions of bail

If the accused person breaks the conditions of bail, this is called a 'breach of bail'. If someone breaches they can be charged with breaching bail and taken back into police custody. For example, if someone doesn't go to Court when required to face their original serious charges, they can be arrested and charged, and kept in custody.

Realistic bail conditions

Make sure the accused person can meet the conditions of bail.

If someone agrees to bail conditions that involves treatment or support services, make sure these things are actually available, because if the person doesn't receive the services agreed to they will be considered to have breached the undertaking.

For example, getting case management assistance might be a good idea, but ABI case management services often have a waiting list of many months, and might not be available in the time specified.

Also, it can be difficult to access services in a rural area where public transport is limited.

The accused person, their lawyer, and the Court representative need to discuss what are realistic bail conditions.

Who can grant bail, and when?

After the police charge you, usually within 24 hours, they must either:

(1) release you on bail, or

(2) take you to Court (or a Bail Justice if outside Court hours) where a judge or magistrate will decide if bail is to be granted or refused.

What determines whether someone gets bail?

The police or Court look at a number of factors to decide if bail is an option:

- the nature and seriousness of the alleged offence
- a person's previous bail history
- the strength of evidence the police have
- the alleged victim's opinion about bail
- the nature of the accused person's disability and how that would affect them in custody
- the character of the accused person
- any available accommodation or treatment options in the community.

An accused person will be refused bail if it is thought that they will:

- fail to appear in Court to face charges
- commit an offence while on bail
- endanger someone's safety or welfare
- obstruct the course of justice.

Being refused bail

If someone is refused bail, they get remanded in custody (taken to prison). See **Prison** (below) for more information.

Do I need legal representation for bail?

Yes. If there is already a lawyer involved, get their advice about bail.

If there is not a lawyer involved, or the lawyer can't be contacted quickly, ask to see the Court's duty lawyer for advice and representation.

Applying for bail more than once

It is possible to apply for bail more than once. A decision to deny bail might be overturned if the accused person's circumstances have changed since the previous bail application. An example would be having new information like a doctor's report that was not presented last time. Someone refused bail in the Magistrates' Court, may be able to apply to the Supreme Court for bail.

Tips about bail

Often people breach bail conditions because they forget what they have to do. These tips can help:

- *Keep the bail form in a safe place where you will see it everyday, such as on your fridge or pinboard.*
- *Take the time to write dates and locations, and people you need to see, in your diary or in your phone reminder system.*
- *Tell someone you trust so they can help you keep track of what you need to do.*

If you have a case manager, ask them to prompt you to go to bail appointments.

What if I can't remember the bail conditions?

If the bail form with the conditions on it gets lost, then contact the police or the Court that issued it. They can provide key details like where to appear in Court, and other bail conditions.

Bail programs

Bail programs are designed to increase the likelihood that a person will be granted bail and will successfully meet bail conditions.

These programs are described in more detail below (see **Going to Court**).

Legal representation

If you come into contact with police, and they want to interview you or they charge you, one of the best things you can do is get legal advice from a lawyer.

This section explains different types of legal representation, and provides a list of places where you can go to seek this help.

Legal practitioners (lawyers)

- Legal practitioners (also called lawyers, barristers or solicitors) are experts on the law and their job is to explain the law to people who are in trouble with the police, or have some other sort of legal problem.
- 'Solicitor' is the old name for the kind of lawyer who sees clients, opens files, may have partners in a firm and does other work including property transactions.
- Barristers are also lawyers, but they specialise in going to Court to represent people. Solicitors can find a barrister to go to Court for their clients. This is called 'briefing' the barrister.
- Lawyers (barristers or solicitors) can represent and speak up for their clients when they go to Court. This is sometimes called legal advocacy.

Where to find a lawyer

When you contact a legal service, ask for a representative who is familiar with ABI or cognitive impairment.

Disability Discrimination Legal Service

Tel: (03) 9654 8644

Website: www.ddls.org.au

Federation of Community Legal Centres

Tel: (03) 9652 1500

Website: www.fclc.org.au

Law Institute Victoria (LIV) (Find a lawyer referral service)

Tel: (03) 9607 9311

Website: www.liv.asn.au/referral

Mental Health Legal Centre Inc.

Tel: (03) 9629 4422

Website: www.communitylaw.org.au

Victorian Aboriginal Legal Service

Tel: 1800 064 865

Website: www.vals.org.au

Aboriginal Family Violence Prevention and Legal Service

Tel: 1800 105 303

Website: www.fvpls.org

Victoria Legal Aid

Tel: 1300 792 387

Website: www.legalaid.vic.gov.au

Villamanta Disability Rights Legal Service Inc.

Tel: (03) 5227 3338

Website: www.villamanta.org.au

Neighbourhood Justice Centre

Tel: (03) 9948 8777

Website: www.neighbourhoodjustice.vic.gov.au

AED (Association of Employees with Disability) Legal Centre

Tel: (03) 9639 4333

Website: www.aed.org.au

See **Section 5** for other legal resources and contacts.

Talking with a lawyer

When you go to your lawyer you should take any papers you have that are about your legal problem, such as any papers the Police have given you.

It's a good idea to tell your lawyer about your ABI and about any problems you may have because of it – things like difficulty remembering, and difficulty controlling your emotions or temper. This will make it easier for your lawyer to help you.

Your lawyer will ask you lots of questions about what happened and why the Police think you have done something wrong.

If you don't understand the questions your lawyer asks you, you should tell them you didn't understand, and ask them to repeat the question again. You can ask them to speak more slowly and not to use big words.

You should try to answer truthfully all the questions your lawyer asks so that they will be able to advise you properly.

Before you go to the lawyer you should write down, or get someone to help you write down, any questions you have for the lawyer.

You can also ask your lawyer to write down for you the answers to any questions you ask them.

You can also ask your lawyer to write down any important information they give you, such as Court dates and other appointments, like doctor's appointments, they want you to have.

Be organised and help your memory

For your appointment with your lawyer, have the date, time, and address in your diary system.

Set your phone alarm to remind you.

Take your folder with the police, Courts, legal paperwork.

Take a written list of your questions and worries.

Write down the key things your lawyer says, or ask them to write these in your folder.

Add any names or appointments into your phone/diary system.

You can change lawyers

- If you have a lawyer, but you are not happy with them because you don't think they understand you, or are not doing a good job, you can ask to change to a new lawyer.
- If your lawyer is from Victoria Legal Aid you can call and tell Victoria Legal Aid that you would like to change lawyers.
- If you have a private lawyer who is being paid for by Victoria Legal Aid you can call Victoria Legal Aid and tell them you are not happy and want a different lawyer. You can't usually do this more than once, unless there is a serious problem the second time.
- You will need to ask your old lawyer to send your file to your new lawyer.

Key resources for legal help

Law Help Guide

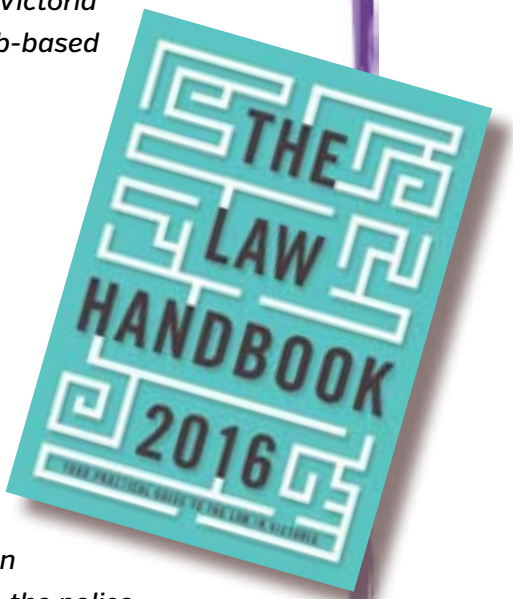
A compact, easy-to-understand guide to legal services available in Victoria. Use it to find a free or low-cost legal service, complaint or dispute settlement service or a private lawyer.

Website: www.victorialawfoundation.org.au

The Law Handbook

The Law Handbook Online is a practical guide to the law in Victoria in the form of a comprehensive, plain English, print and web-based legal resource.

Website: www.lawhandbook.org.au



Everyday-Law

Everyday-Law provides Victorians with reliable, easy-to-understand legal information in one spot.

Website: www.everyday-law.org.au

Non-legal advocacy

There are other **advocates** *who are not lawyers but who can help explain things and help you to speak up for yourself to the police and others. These advocates will help you find a lawyer if they think you need legal advocacy.*

DARU (the Disability Advocacy Resource Unit) will help find a non-legal advocate. Its website has a search system to find advocacy services in different geographical areas.

Tel: (03) 9639 5807

Website: www.daru.org.au

Also see the resources in **Section 5**.

Resources for Court

There are many different kinds of courts in Victoria. They preside over different kinds of crimes and legal issues, and have different processes. Not all of them are related to criminal matters, but they may still be relevant to people who have an ABI.

A brief description of these courts is set out below. If you need to go to Court, it is wise to learn about it before you go. For more details, see the **Courts in Victoria** heading in Section 5, **Resources and Contact Details.**

More information: Court Services Victoria:

Website: www.courts.vic.gov.au

Magistrates' Court

The Magistrates' Court is where less serious crimes are heard. It deals with all **summary offences** and some indictable offences.

Infringements Court

The Infringements Court is a venue of the Magistrates' Court which deals with the processing and enforcementof infringement notices and penalties such as speed camera and parking fines.

County Court

The County Court is where more serious crimes are heard. The County Court can hear all **indictable offences** except murder and treason.

Supreme Court

The Supreme Court is where the most serious crimes are heard. The Supreme Court can hear all indictable offences, but usually deals with murder charges.

Coroners Court

The role of the Coroner is to investigate deaths and fires. A Coroner will try to find out the identity of the deceased and how the death happened.

Drug Court

The Drug Court hears charges made against people with a drug or alcohol dependency who have committed a crime to support their habit, or committed a crime while under the influence of drugs or alcohol.

An offender may be sentenced to a 2-year Drug Treatment Order that focuses on the rehabilitation of the offender. The Court is located in Dandenong.

Koori Court

The Koori Court hears cases involving Indigenous offenders. Members of the Koori community participate in sentencing. The Koori Court can hear the same offences as the Magistrates' Court, except family violence and sexual offences.

Mental Health Tribunal

The Mental Health Tribunal makes decisions about whether someone should receive compulsory treatment for a mental illness. Decisions might relate to Compulsory Treatment Orders (CTO) or electroconvulsive therapy (ECT). Three independent members make up the tribunal and make decisions by majority.

Hearings are informal and are usually held in private. The tribunal will want information about your mental health, treatment and your situation before it makes a decision. If you disagree with the decision, you can apply to the tribunal again later or go to the Victorian Civil and Administrative Tribunal (VCAT).

Victorian Civil and Administrative Tribunal (VCAT)

VCAT hears civil matters, rather than criminal justice matters. You would go to VCAT for matters relating to guardianship, administration, racial and religious vilification, information privacy, disputes and issues relating to the Disability Act.

VCAT is less formal than a Court, and is run by a Member rather than a Magistrate or Judge.

At the hearing, the VCAT Member will listen to your story and then will make a decision. They can give you a legal 'Order' that you need to follow.

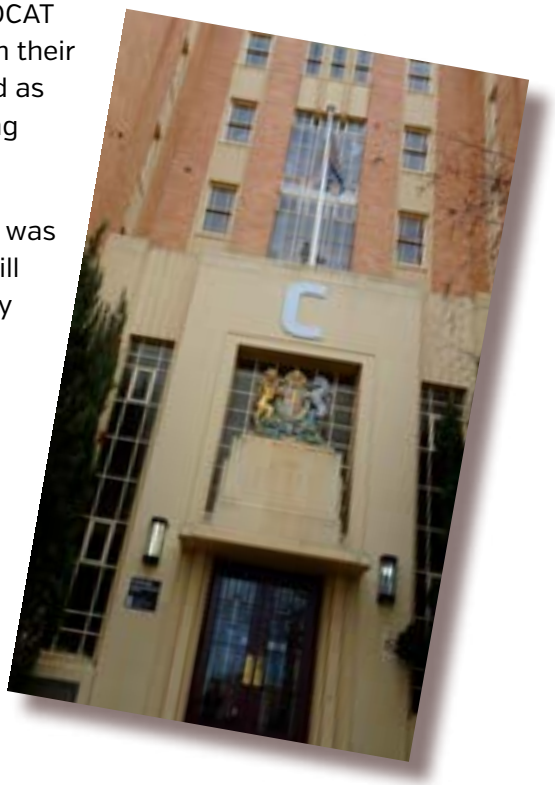
If you are unhappy with the decision, you can ask the Member to explain it (this is called a 'statement of reasons') or ask for a re-hearing where another member will listen to your story again.

You can ask a lawyer to help you at a VCAT hearing if you want to.

Website: www.vcat.vic.gov.au

Victims of Crime Assistance Tribunal (VOCAT)

If you are a victim of a violent crime, you can apply to VOCAT for financial assistance. VOCAT assists victims of crime in their recovery helping them financially with expenses incurred as a direct result of the crime. It can also provide counselling sessions.



You can only apply if the crime happened in Victoria and was violent, such as aggravated burglary, assault, threat to kill or culpable driving. You must also have suffered an injury and made a report to poice in a reasonable time.

Tribunal website: www.vocat.vic.gov.au

VOC website: www.victimsofcrime.vic.gov.au

Resource booklet for victims of crime: A Victim's Guide to Support Services and the Criminal Justice System. (For PDF version, Google the title.)

Neighbourhood Justice Centre (NJC)

For people who live in the City of Yarra, the NJC resolves disputes by addressing the causes of behaviour and tackling social disadvantage. The Centre helps people who have to go to court, and has a wide range of community support services.

Tel: (03) 9948 8777

Website: www.neighbourhoodjustice.vic.gov.au

Court services

A number of Court services exist to help you navigate the system. These are described briefly in this section. For phone numbers and websites, see:

Website: www.magistratescourt.vic.gov.au

Guide to specialist Courts and Court support services (For PDF version, Google the title.)

See also **Section 5, Resources and Contact Details.**

Court Network

Court Network is a service that provides support and information to people who are going to Court.

Court Network volunteers are called 'Networkers'. They are available in most Courts. Networkers can give you:

- personal support over the phone or in person at the Court. They can make sure you feel safe at Court, organise interpreters, and organise access for people who have a disability.
- information about going to Court. They can explain procedures so you know what to expect. They can also refer you to other services that can help, such as legal services and community services.

Tel: 1800 681 614

Website: www.courtnetwork.com.au

Assessment and Referral Court (ARC) List

The Assessment and Referral Court List (ARC List) aims to meet the needs of accused persons who have a mental illness and/or a cognitive impairment. The List works closely with CISP – which is described below.

The ARC List provides case management to participants, including referral for psychological assessment, referral to health, welfare, disability or housing services and referral for drug and alcohol treatment.

To be eligible for the ARC List you must live in Melbourne. Referrals can be made by the person accused, family members, community service organisations, magistrates, police, prosecutors, legal representatives and other Court based support services.

If a referral is accepted, an individual support plan will be developed that details what services you need to work with. You will regularly appear before the List Magistrate to discuss your progress. You will usually be involved with the List for between 3 and 12 months.

If you plead guilty, you will be sentenced within the ARC List. If you plead not guilty (or the referral is not accepted), your case will be returned to a mainstream Court for a hearing.

Court Integrated Services Program (CISP)

The Court Integrated Services Program (CISP) works out why you committed an offence and ensures that you get the help and services you need so that you do not offend again.

Depending on your circumstances, a CISP worker might arrange for you to have a psychological assessment, be linked to drug and alcohol treatment, crisis accommodation, disability services, mental health or ABI services. Intensive case management is available for up to 4 months.

CISP operates in the Magistrates' Court in Melbourne, Sunshine and Morwell. Referrals can be made by police, lawyers, support services, family or the accused person.

Tel: (03) 9628 7936

Website: www.magistratescourt.vic.gov.au (search for 'CISP')

CREDIT/Bail Support Program

'CREDIT' stands for Court Referral & Evaluation for Drug Intervention & Treatment. The aim of 'CREDIT/Bail' is to increase the chance of you being granted bail and successfully completing the bail period. It does this by linking you into assistance like drug treatment, legal assistance, mental health and disability support, and accommodation.

You are on bail while you are using these supports and you must make an effort in your treatment. The Program lasts for up to 4 months.

Any person accused of a crime and eligible for bail may be referred to the CREDIT/Bail Support Program. This is regardless of whether a plea has been entered or whether a person intends to plead guilty or not.

There is a brochure and information on the website.

Website: www.magistratescourt.vic.gov.au *(search for 'CBSP')*

Diversion Program

A diversion program is a way to deal with your offence constructively and give you the chance to avoid a criminal record.

You are asked to follow certain conditions, such as apologise to the victim, participate in counselling, do unpaid community work, make a donation, or complete an education program such as a drug awareness course.

If you follow these conditions, then the police drop the charges against you.

To be eligible for diversion, four things are required:

- The offence you committed must be one that can be heard in the Magistrates' Court.
- It can't be an offfence that has a fixed sentence.
- You must take responsibility for committing the offence.
- The prosecution must agree to diversion in your case.

You can ask for a Diversion Program. The Magistrate will decide if it is appropriate for you.

Diversion is often suited to first-time offenders and less serious crimes such as theft, careless driving and minor drug offences.

Website: www.magistratescourt.vic.gov.au (search for 'diversion')

Enforcement Review Program (ERP)

The ERP can help if you have outstanding fines and special circumstances.

A special circumstance may include an ABI or another condition that caused impaired judgment at the time of the offence.

You can apply to the Infringements Court (part of the Magistrates' Court) to have the fine withdrawn based on your circumstances. Your application must be in writing and include medical proof.

If your fine is for excessive speeding or drug/drink driving offences then you cannot apply to have the fine withdrawn.

Website: www.magistratescourt.vic.gov.au *(search for 'ERP')*

Mental Health Court Liaison Service (MHCLS)

The MHCLS does clinical assessments to determine whether you do or don't have a serious mental illness. The workers give feedback to the Court about your results. This helps the Court to make decisions where serious mental illness needs to be taken into account.

The MHCLS can also refer you to the mental health treatment services that you need and workers can assess if you are fit to plead not guilty or guilty.

Website: www.magistratescourt.vic.gov.au *(search for 'MHCLS')*

ABI and mental illness

Many people who have sustained an ABI develop a mental illness later on.

Common problems include depression, anxiety, and post traumatic stress disorder (PTSD). These problems might affect the sentences and services you receive when you go through the Courts process.

If you think you have mental health problems, talk to your lawyer about them, and talk to your GP, psychologist, or psychiatrist.

Going to Court

Getting prepared

Get legal advice and representation

Get a lawyer. Criminal charges are serious. A lawyer can help you understand the charges and give you advice about your case, your options, how you should plead (not guilty or guilty) and how to prepare for the hearing.

If you find it difficult communicating with your lawyer, you should seek the assistance of an Advocate who can help you.

Pleading not guilty or guilty

It is up to you whether you plead not guilty or guilty.

As a general rule, only plead guilty if you think you are guilty.

To help you decide, you can think about:

- the advice your lawyer gives you
- your defence and the strength of the prosecution's case against you
- the penalties for the offence
- your chances of being found not guilty.

Know which side you're on

The 'defence' means you and your lawyer.

The 'prosecution' is the other side – it can be the police, a local council or government department.

Gathering evidence

Both the defence and prosecution will gather evidence about the alleged offence.

Your lawyer will assess your case and the prosecution's case. Your lawyer will also work out what defence arguments you might have. Your lawyer can speak with you about the best option to take.

The prosecution must prove that you are guilty of the offence 'beyond reasonable doubt'. This means that if there is a reasonable doubt in the magistrate's mind about whether you actually committed the offence, they must find you not guilty.

Two terms to know

A **consolidated plea** means more than one separate set of charges is heard as a plea of guilty on the same date.

Part heard describes a case that has started but all the witnesses have not been heard, so the case has to be adjourned and then continued on another day.

Decision making

Decision making is another thinking skill that can be impaired by ABI. Trying to think of all these guilty/not guilty things at once can be very difficult.

It often helps to use pen and paper, and write down each of these things so that you can see them all at the same time. Try doing this with someone like a case manager or family member who can help you map out the advantages and disadvantages of pleading guilty or not guilty.

Types of offences

A **summary offence** is a less serious crime such as a traffic offence, minor assault, or offensive behaviour.

An **indictable offence** is a more serious crime, such as armed robbery, murder, threats to kill or inflict serious injury, sexual assault, or drug trafficking.

See the Glossary in Section 5 for other terms.

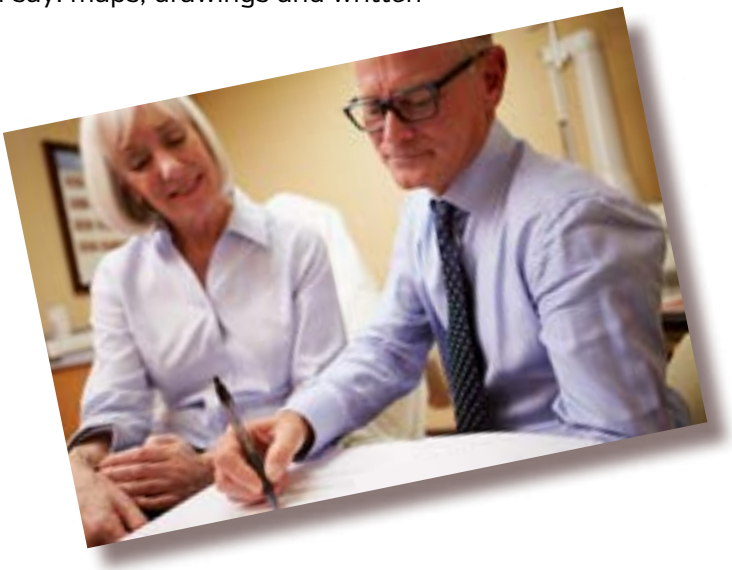
Gathering reports for court

It can help you in Court to have documents that support your version of events.

Your lawyer can advise you about which documents can help your case.

Some examples of support documents are:

- A statement from a witness saying that your version of events is true.
- Reports from professionals. These can be neuropsychology, psychology, psychiatry, occupational therapy and medical reports.
- Financial records: bank statements, or copies of invoices.
- Documents that support what you say: maps, drawings and written plans.
- Other documents: letters, correspondence, affidavits, photos or videos.



Failing to appear at court

If you receive a summons, you should read it carefully, and go to Court.

Do not ignore the summons.

If you do not go to Court, you may receive a harsher sentence than if you did appear at Court.

If you are charged with an indictable offence and you are on bail, an **arrest warrant** will be issued for your arrest. An example appears on the next page.

Going to Court gives you the chance to tell the magistrate how your life will be affected by getting a penalty.

Be organised

Many people have trouble getting organised, and it is a common problem after ABI. As a legal matter progresses lots of paperwork will build up. It is important to keep records of everything relevant to your case.

- *Buy a folder and hole punch and put all records into the folder.*
- *Use plastic sleeves if you prefer*
- *Keep the folder somewhere it can be found easily. If there isn't an existing 'go-to' spot, then make one. E.g., put a small table in the hallway and get in the habit of putting important things there: keys, mobile phone, charger, wallet, and the legal folder.*
- *Go to the Office store and get a large wall calendar to put nearby.*
- *Write in court dates and write key phone numbers down the side.*
- *Double up and put dates and numbers into the mobile phone.*

CHARGE - SHEET AND WARRANT TO ARREST

Accused Copy - Bring this with you to Court

Magistrates' Court Criminal Procedure Rules 2009 Form 5 Rule 11

TO THE ACCUSED	Unsuitable Dates: Nil Unsuitable Dates
	Preferred Dates: Nil Preferred Dates
, VIC	M ☐ F ☐ Co ☐ — Date of Birth
You have been charged with an offence against the law. Read these pages to see what you must do	Registration No. — State VIC
MNI / JAID:	Licence No. — State VIC

Details of the charge against you

What is the charge? 1

Under what law? ☐ State ☐ Act ☐ Other - Specify ☐ C'Wealth ☐ Reg | Act or Regulation No. | Section/Clause (Full Ref.)

Type of Offence ☐ **Summary Offence** (You **should** go to Court) ☐ **Indictable Offence** (You **must** go to Court)

Request for Committal Proceeding ☐ No ☐ Yes

Are there more charges? ☐ No ☐ Yes - see "Continuation of Charges" attached

Informant | Phone No:

Agency and Address , VIC.

Email | Fax

Informant Signature | Date

Charge Filed at | Date

Request for issue of a warrant to arrest

I apply for the issue of a warrant to arrest on the following grounds:

WARRANT TO ARREST

To all members of the police force or _____ Informant

You are authorised to break, enter and search any place where the person named in this warrant is suspected to be, to arrest that person and bring *☐ him/*☐ her before a Bail Justice or the Court as soon as practicable to be dealt with according to law or cause the person to be released on bail in accordance with the endorsements on this warrant.

I am satisfied by evidence *☐ on oath/*☐ by affidavit that a warrant should be issued on the following grounds:

☐ It is probable that the person will not answer a summons
☐ The person has absconded or is likely to abscond
☐ The person is avoiding the service of the summons
☐ The warrant is * ☐ required/* ☐ authorised by another Act namely:
☐ Or for other good cause namely:

Issued at: ☐ Magistrate Date

Issued by: ☐ Registrar

Fitness to be tried and 'capacity'

The law presumes you are capable of understanding whether to plead guilty or not, and that you understand the consequences of your plea. This is called having 'capacity'.

Many people do not have capacity – a brain injury, for example, can seriously affect someone's ability to fully understand all the implications of what they tell the Court.

You would be considered unfit to stand trial for an offence if you are unable to:

- Give instructions to your lawyer
- Understand the nature of the charge
- Enter a plea of 'not guilty' or 'guilty'
- Understand what the trial is about
- Follow the course of the trial
- Understand the prosecution's evidence

Whether it is the defence team or the prosecuting team that thinks you do not have capacity, they must prove this.

Sentencing

If the magistrate finds you guilty, he or she will sentence you. This means you will get some kind of penalty – these are described below.

The sentence you get will depend on:

- The nature of the offence and how serious it was
- Your character and history and whether you have been found guilty of a similar offence before
- What else was going on in your life when you committed the crime
- The level of understanding you had that the behaviour you did was wrong (that is, your 'culpability')

What is a 'conviction'?

When you are sentenced, your penalty will be given either with a conviction or without a conviction. If your offence was serious, you are likely to get a conviction.

Getting a conviction means your offence is recorded on your criminal record. One consequence of this is that information about your offence may be disclosed to potential employers by the police.

Types of sentences

The kinds of sentences you might receive are designed to be:

- rehabilitative (help you, or teach you, to not break the law again)
- punitive (intended to stop you doing the crime again by way of punishment)
- custodial (for example, going to prison).

Different types of sentences are briefly described below.

Dismissal

The magistrate can find you guilty, but decide not to record a conviction because the offence was so minor.

Sentences and Police checks

In Victoria a court can find a person guilty of an offence but not record a conviction. Examples of this are adjourning a case on condition of good behaviour, imposing a fine, or imposing a correction order.

Even if a court does not record a conviction this does not necessarily protect the offender from damage to their reputation. Victoria Police policy relating to criminal records means that findings of guilt will appear in your police check - regardless of whether a conviction was recorded. Police can also list an offence on your record if you have been charged and the case is awaiting hearing, or even if you are only a suspect under investigation.

Discharge

If you have committed a minor offence, upon conviction, you can be discharged without further penalty.

Adjourned undertaking

An adjourned undertaking means your charge can be put off for a period of up to 5 years. An adjourned undertaking can be with a conviction or without a conviction.

The undertaking is like a good behaviour bond and conditions can be put on you. If you breach your undertaking, you can be re-sentenced if the charge is found proven.

Fine

The magistrate may order you to pay a fine, pay money to the Court, or pay money to a victim. The magistrate will look at your financial situation when making this decision. If you have to pay a fine, you can pay it over time. If you do not pay your fine, the Court will take enforcement action.

Community Corrections Order (CCO)

A CCO is a flexible order that allows you to serve your sentence in the community. Sometimes the Court will decide that an offender can be released if they can meet certain conditions. These conditions differ according to the kind of offence you have been found guilty of, and your particular circumstances.

A Community Corrections Order can be with a conviction or without a conviction. It can last for up to 2 years.

You may have to do things like:

- Community work (such as gardening at a local school)
- An education program
- Counselling
- Alcohol or drug tests

You must not commit any offences (break any laws) while you are on this order.

Justice Plan

A Justice Plan is a special plan developed by an authorised worker that recommends services to specifically address offending behaviour. The plan is aimed at rehabilitating the offender. Unfortunately, Justice Plans are not available to persons with an ABI. To qualify, a person must be registered as having an intellectual disability.

Assessment and Treatment Orders

A Court may sentence you to a period of time in a mental health facility if, after an assessment of you by a psychiatrist, this is considered appropriate.

Imprisonment

You may be sentenced to prison if the offence you have been found guilty of is serious and it is not your first offence. A Magistrate can imprison you for up to 2 years on a single charge, but can only imprison you to a maximum of 5 years.

Suspended sentences

These are no longer available in Victoria. (A suspended sentence is a prison sentence that does not happen straight away. It allows a judge to decide that an offence is serious enough for a prison term, but because of the circumstances, the prison term should be put on hold.)

Parole

Parole means you are released from custody (prison), but conditions are put on you. When you are released, you are still serving your sentence, but in the community setting rather than prison. For example, you might be sentenced to 5 years prison with a non-parole period of 3 years. This means that you will become eligible to be released after 3 years. You are likely to be released on parole if you have demonstrated good behaviour in prison.

The Adult Parole Board decides whether you will be released on parole. The Board's most important consideration is community safety.

Resources for Court

Booklet: Your Day In Court – A guide for people going to the Magistrates' Court for minor criminal offences.

Website: www.legalaid.vic.gov.au

Video: Virtual Court room (provides a sense of what it is like in a Court).

Website: www.neighbourhoodjustice.vic.gov.au

Tip Sheet: Things to do

☑ Getting ready to go to court

- ☐ *Speak to your lawyer.*
- ☐ *Ask your lawyer if you will have to give evidence (testify) in Court.*
- ☐ *Ask if you will need references (letters of good character), medical or allied-health reports about your ABI, disability or other special circumstances.*
- ☐ *Ask someone you trust to go to court with you for support.*
- ☐ *Check your paperwork for the time and date you must attend Court*
- ☐ *Put it in your diary / on your calendar.*
- ☐ *Work out how to get to Court and how long it will take to travel there.*
- ☐ *Prepare what you need to take in advance.*
- ☐ *Organise your paperwork in a folder with divider tabs and take this to Court.*
- ☐ *Get your clothes and wallet ready the day before.*
- ☐ *Be prepared to wait. You may have to spend all day at Court.*
- ☐ *Pack any medication, drinks or snacks you will need.*
- ☐ *Don't take too much with you.*
- ☐ *If there is a chance that you might be taken into custody, give your personal items to your friend or family member to hold for you.*
- ☐ *Dress in smart, neat, casual clothing that is comfortable and warm.*
- ☐ *Have a support person with you who can help you stay calm.*
- ☐ *Plan to arrive early at court.*

☑ Attending Court

The Court is a formal place. It has rules and you need to follow them.

- ☐ *Arrive at least 30 minutes early.*
- ☐ *Behave in a quiet and respectful manner in court.*
- ☐ *Turn off your mobile phone.*
- ☐ *Do not wear a hat, cap or sunglasses in court.*
- ☐ *Do not eat, drink, chew gum or smoke in the Court room.*
- ☐ *Address the Magistrate or Judge as 'Your Honour'.*

☑ Giving evidence in Court

- ☐ *When giving evidence, your role is to tell the Court what happened.*
- ☐ *You may need to make an oath or affirmation (a promise to tell the truth) if giving evidence in the witness box.*
- ☐ *Listen carefully and think about each question before you answer.*
- ☐ *If you do not understand a question, say so.*
- ☐ *If you don't know the answer to a question, say so.*
- ☐ *Take your time. You don't have to rush your answers.*
- ☐ *Speak loudly, clearly and slowly.*
- ☐ *Use short, simple sentences.*
- ☐ *Try to remain calm.*
- ☐ *If you are getting upset, ask if you can have a break.*
- ☐ *Talk to your lawyer about arranging a 'stand down' (a break) if you think you will need one.*

Prison

People in prison fall into one of two categories: (1) remand or (2) sentenced prisoner.

Remand prisoners

Remand means that the alleged offender is sent back into custody, typically to a remand prison, until their case is heard in Court.

You will be remanded in custody if you:

- have not applied for bail
- are unable or unwilling to agree to the conditions of bail
- cannot put up bail money or provide a surety
- have been refused bail
- your bail is **revoked** (taken away).

People on remand are considered innocent until proven guilty.

Remand prisoners:

- are generally held separately from sentenced prisoners
- have fewer restrictions placed on them than sentenced prisoners
- have more access to visitors and phone calls than other prisoners
- have access to legal resources including a legal library
- are offered the opportunity, but are not obliged, to work
- are allowed to wear their own clothing

Most male prisoners on remand go first to the Melbourne Assessment Prison and are then held at the Metropolitan Remand Centre.

All female prisoners on remand are held at the Dame Phyllis Frost Centre.

People in custody who require involuntary mental health care are transferred to Thomas Embling Hospital.

Sentenced prisoners

Sentenced prisoners have been found guilty of an offence and sentenced by the Court to serve time in prison. This group includes prisoners who have been sentenced and are awaiting appeals, as well as prisoners who have been found guilty but not yet sentenced. Any time that you have already spent in remand will be taken off your sentence.

Tip Sheet

☑ Preparing to go to prison

If there is a chance of going to prison, here are some things to be done beforehand:

☐ *Tell family or friends*

They may be able to help you in a number of ways.

☐ *Authority to act on your behalf*

Complete paperwork that gives someone trustworthy the authority to speak with utility companies (electricity, gas, water), telephone companies (mobile and landline phones), and the banks (to access money for you and pay bills on your behalf). Talk to your bank or utility provider about what forms they require.

☐ *Make arrangements for pets*

Who will look after the pets during a prison stay?

Friends might do this is if pet food and vet bills could be covered.

The RSPCA can provide advice if a new home has to be found for the pets.

Tel: (03) 9224 2222

☐ *Organise finances*

Pay off any bills, set up automatic direct debit payments, cover the rent or reduce home loan repayments if you have a mortgage.

☐ *Secure your home*

Lock the doors and make sure the property is secure.

Give a key to someone you trust so they can look after the property.

Inform your landlord if you are going to be away for a long time.

If you plan on leaving a rental property you can apply to get your bond back.

☐ *Office of Housing*

They need to know if tenants are away from the home for more than six weeks.

In some circumstances, they allow reduced rent when tenants are absent from a property.

☐ *Mail*

Arrange for mail to be forwarded to another address.

Australia Post can redirect mail.

☐ *Furniture and valuables*

If you might be in prison for several months consider putting furniture and possessions in a storage facility. Alternatively, someone you trust might mind your things. You could also consider selling your possessions because this would give you some extra money and you won't have to worry about storage. Make a list of what you own and what you decide to do with it.

☐ *Vehicles*

Who will look after the car, bike, scooter, boat or other vehicles?

Can they be stored safely?

If someone else is going to use the vehicle, make an agreement in writing about who will pay for insurance, service, repairs and fines.

Entering prison

All prisoners go through 'reception' and 'assessment' before entering a prison unit. This is to identify you, assess your needs and determine the most appropriate prison for you. Prison programs and regulations vary from prison to prison.

When you arrive at prison you will:

- hand over your clothing, money and any other personal property, which will be stored while you are in custody. You will be given a receipt for these items, and you will get them back when you are released.
- undergo a strip-search by prison officers
- be given prison uniform clothing
- have a health examination conducted by medical staff
- provide a sample of DNA if ordered to do so by the Court
- nominate people who can visit or have telephone contact with you
- be entitled to one telephone call to a friend, family member or legal representative
- get an orientation about the prison environment
- receive information about prisoners' rights, prison rules and routines, expectations of behaviour, disciplinary processes, complaints procedures, work, training and education, visitors, letters and phone calls, health services and staying safe.

Behave

It is common after an ABI to get angry quickly. Some people describe it as being like going from zero to 100 miles per hour in a second.

Prison can be a tough, strict environment where losing your temper will cause you grief. It is in your best interests to cooperate with routine requests by prison officers. Reasonable force, as well as disciplinary proceedings, may be used if you refuse to cooperate.

The prison psychologist might understand these kinds of problems that go with ABI. Talk with them about how to manage things.

Prison activities

Prison provides a range of services that are briefly described here. The descriptions are for orientation only, they are not comprehensive. The Law Handbook provides more comprehensive information.

Website: www.lawhandbook.org.au/

Programs and plans

Prisons offer behaviour change programs like:

- anger management
- parenting skill
- drug/alcohol treatment
- adult relationships

Prisoners can have a plan developed for them that details program requirements and recommended activities. Participation in these programs is mostly voluntary and is viewed favourably by the Adult Parole Board.

Employment

Sentenced prisoners are generally expected to work when in prison. Prisoners get paid to work at a rate determined by Corrections Victoria. Employment or 'industry' activities in prison can include metal fabrication, woodwork, agriculture, horticulture, silk screening, laundry, and kitchen positions. The prisons usually also offer vocational (job) training and education opportunities.

Education

Prisoners can generally access education programs that are provided by TAFE institutes at the prison. Available programs include computer skills, literacy/numeracy, hospitality, small business management, engineering, horticulture, and occupational health and safety.

Health services and therapy

Many people with ABI have health and rehabilitation issues that can be greatly affected by a prison stay. Some key things to know are:

- doctors, nurses, and other allied health professionals provide on-site health care in every prison
- a clinic operates daily where nursing care is available. Seeing a doctor, dentist or specialist requires a booking
- prisoners are also entitled to use their own money to pay to see a private medial practitioner, dentist, physiotherapist or chiropractor of their choice
- people are not eligible for Medicare in prison
- prison does not have the same kind of specialist ABI-rehabilitation service that is found in major hospitals or community facilities
- publicly-funded services, such as case management or counselling, will stop once a person goes to prison
- services funded through an insurance agency like WorkCover or the Transport Accident Commission (TAC), will stop when someone enters prison. That is, any physiotherapy, occupational therapy, psychology or other rehabilitation services funded by the insurer will be cancelled when entering prison. These will not automatically recommence when someone leaves prison – this is discussed in more detail below.

Income payments

Income payments from agencies such as WorkCover, TAC or Centrelink, will stop while someone is in prison.

Centrelink is informed when a person enters prison, and most Centrelink payments will stop. (Possible exceptions are Family Allowance or Maternity Payment where a mother has an infant in prison with her).

Centrepay deductions (like for paying rent or bills) will stop. Other arrangements will need to be made for these payments.

Religion

Prisoners have the right to practice their religion of choice and can access religious services in prison. A variety of religious organisations have representatives, called chaplains, who visit the prison. Chaplains come from Christian, Buddhist, Muslim, Jewish, or Greek Orthodox faiths, to provide support to prisoners.

Money and buy-ups

Prisoners can buy food, toiletries and other items from the prison's 'buy up' or shop – things like soft drink, biscuits, chips and sweets, soap and shampoo. Prisoners spend from their 'personal money' account that is held for them by the prison. 'Personal money' accounts can be topped up by visitors (family and friends). Different prisons may have different requirements for depositing money into accounts.

Visits

Some things to know about visiting someone in prison:

- Prisoners are allowed to receive visits from family, friends and lawyers.
- Prisoners need to give prison authorities a list of people who may visit them. They need to include the visitor's full name, date of birth and address. Up to 10 people can be on the visitors list at any one time.
- Visiting times are limited and may be from 30 minutes to 3 hours.
- There may be limits to the number of personal visits allowed from family (perhaps 1 per week).
- There is no limit to the number of visits from a lawyer you can have in visiting hours.

There are typically three kinds of visit:

- ***personal contact –*** where you are in the same room as your visitor and contact (touch) is allowed
- ***personal non-contact*** (box visit) – where you and the visitor sit in a small booth (box) separated by glass
- ***professional visits*** – where you have a confidential meeting with a professional such as a lawyer or health care worker.

Phone calls

Some things to know about phone calls:

- prisoners can have a maximum of 10 people on their approved phone list at any one time (this list is not the same as the visitors list, and friends or family may need to be listed on both)
- prisoners are usually allowed to make 1 or 2 personal phone calls a week
- calls to lawyers are not limited.

Sending and receiving mail

Prisoners have the right to send and receive mail, but there are restrictions on what can be sent:

- mail will be checked for prohibited items
- the prison can censor letters if the content jeopardises security or is threatening in nature
- prisoners do not have access to the internet.

Complaints

If someone has a *general* complaint about prisons or correctional services, they can contact Corrections Victoria.

Tel: (03) 8684 6600

Website: www.corrections.vic.gov.au

If someone is not satisfied with the way that Corrections Victoria has dealt with their complaint, they can contact the Victorian Ombudsman.

Tel: (03) 9613 6222

Website: www.ombudsman.vic.gov.au

A prisoner who has a complaint about their health care can complain to the prison health service.

If the prison health service cannot resolve the complaint, it can be taken to the Office of the Health Services Commissioner.

Tel: (03) 8601 5200

Website: www.health.vic.gov.au/hsc

Prison advice service

Victoria Legal Aid (VLA) offers a Prison Advice Service. Lawyers visit the prisons on a regular basis and provide legal advice in relation to pending criminal matters.

Tel: 1300 792 387

Website: www.legalaid.vic.gov.au

Inside Access

Inside Access delivers free legal services and advocacy to imprisoned persons in Victorian adult and forensic correctional facilities.

Tel: (03) 9629 4422

Website: www.insideaccess.wix.com

Parole

Parole means that an offender has completed their minimum sentence, and is released from custody to serve the unfinished part of their sentence in the community.

Whether a prisoner will be released on parole is decided by the Adult Parole Board, which sets conditions designed to decrease the likelihood of reoffending.

A person on parole may have to:

- report to a Community Corrections Officer regularly
- go to rehabilitation appointments
- provide urine tests
- do community work
- live at a specific address and not associate with certain people.

Released on Parole

If you are released on parole, key things are to:

- *show up to the appointment with Community Corrections*
- *understand what your parole conditions mean*
- *have procedures and people in place to help you meet the conditions*
- *don't breach the conditions (breach of parole is an offence)*

Violating parole

If someone on parole violates their parole conditions, they can be sent back to prison.

Some people get released without parole. This means going back into the community with neither supervision nor support from Corrections.

Tip Sheet

☑ Getting out of prison

Get organised: write it down, check it off the list.

- ☐ *Write down the name of your Transitional Assistance Program (TAP) coordinator in prison:*
- ☐ *Make an appointment with the prison health services.*
- ☐ *Learn where and when in the prison to collect personal property.*
- ☐ *Learn how to get cash from your 'personal money account'.*
- ☐ *Get medications and prescriptions organised:*
  - *Who is your GP in the community for more prescriptions?*
  - *Who is your chemist in the community to fill prescriptions?*
- ☐ *Think carefully about who to tell about release:*
  - *Friends*
  - *Family*
  - *Insurance (TAC, Workcover)*
  - *Case worker*
- ☐ *Where are you going to stay when you leave prison?*
- ☐ *Transport: How do you get from prison to where you stay?*
- ☐ *What's the back-up plan in case of some problem arising?*
- ☐ *What's the plan if you are granted weekend release?*
- ☐ *Get a discharge (release) form – you might need this for Centrelink.*
- ☐ *Talk with Centrelink to check if you're eligible for payments.*
- ☐ *Write down and organise any other services you may need (e.g., home care, case management, doctor's appointment).*

Leaving prison

Being released from prison can be a relief, but returning to life in the community can also be stressful, especially in the first weeks. Changes to your routine, having limited money, and getting things organised can be challenging. You may feel lonely, overwhelmed, anxious or depressed. There are things you can do to make the transition easier.

Transition and reintegration

At the time of writing, Corrections Victoria (CV) was making substantial changes to the way prisoners' needs are met. Some readers will recall the Transitional Assistance Service or programs such as Link Out. These programs are ending. In this section we orient you to some of the new language and pathways as we understand them. This CV redevelopment is a work in progress, and we have deliberately simplified the content below.

The Corrections Victoria Reintegration Pathway ('the Pathway') aims to provide an integrated approach to transitional planning that addresses seven domains: housing, drug and alcohol, mental health, employment, education and training, family and community connectedness, and independent living skills.

The Pathway divides the course through prison and back into the community into four stages:

- Reception
- Sentence
- Pre-release
- Post-release

The pre-release and post-release stages are explained further here.

Pre-release stage

As its name suggests, the Pre-release stage aims to address individual needs prior to release. At this point, a range of transitional support services and referrals should occur. There are three main parts to this:

- The Pre-Release General Program, provided by CV
- Relink: Pre-Release Group Program, provided by VACRO
- Relink: Pre-Release Individual Program, provided by VACRO

Pre-Release General Program

The Pre-Release General Program:

- is available to all sentenced prisoners
- commences 18 months prior to release (or immediately after reception, for prisoners serving shorter sentences)
- can assess what someone needs to transition from prison to the community, and provide information and referrals to assist
- provides referrals to Centrelink, housing support services, and drug and alcohol services as well as information about employment services, legal support and Community Correctional Services.

Staff explain the process of leaving prison and how to do things like collecting property and money, and arranging transport.

They can also help prisoners consider changes that might have occurred while they were in custody, like changed relationships with family and friends, changes in technology, and other changes in the community.

If you want to find out more about this program, ask the Transition Coordinator or prison staff.

Prisoners who have greater transitional needs may be referred to the Relink Pre-Release Program (VACRO) and/or the Corrections Victoria Reintegration Program (CVRP).

Relink Pre-Release Group Program ('Relink-group')

The Relink-group:

- is designed to provide practical advice and tailored support aimed at addressing Independent living skills and family and community connectedness
- consists of up to eight hours of group sessions led by a group facilitator.

Participation in the group is likely to be triggered by:

- the prisoner being 12 months out from their discharge date, or
- a positive review of the Parole Application Process to the Adult Parole Board.

Relink Pre-Release Individual Program ('Relink-individual')

Relink-Individual:

- is designed to provide flexible one-on-one assistance to prisoners who are identified as having significant and complex transitional needs
- will include up to four hours of targeted support prior to release

Post-Release Stage

The Corrections Victoria Reintegration Program:

- is designed to provide reintegration support for prisoners who have very high needs or complicated situations such as having an ABI and mental health problems, having no family to help, and being homeless
- will focus on the seven domains listed above (housing, drug and alcohol, mental health, and so forth)
- is to be combined with a specific response for Aboriginals and Torres Strait Islanders
- will be regionally based
- will be provided by four non-government agencies; JSS, VACRO, ACSO and VALS.

The program is expected to work like this:

- In the pre-release phase, workers will meet with participants 6 weeks prior to their release and help them plan for release
- In the post–release phase, workers will help participants with practical needs and develop links to appropriate support services

Support may last for up to four weeks for participants with more immediate transitional needs that can be addressed through brief intervention.

Support may last for 6 to 12 months for participants with more entrenched and complex needs and at higher risk of reoffending.

Pathway Agencies

Jesuit Social Services (JSS)

Services in the North Metropolitan and West Metropolitan regions

Location: Brosnan Centre, 10 Dawson Street Brunswick.

Tel: (03) 9387 1233

Victorian Association for the Care and Re-settlement of Offenders (VACRO)

Services in the Grampians and the Barwon South-West region.

Location: Level 1 116 Hardware Street Melbourne

Tel: 1800 049 871 (toll free)

Australian Social Care Organisation (ACSO)

Services in the Loddon, Mallee, Hume, Gippsland and South-East Metropolitan regions.

Location: 1 Hoddle Street Richmond

Tel: (03) 9413 7000

Victorian Aboriginal Legal Service (VALS)

Services statewide.

Location: 273 High Street Preston

Tel: 1800 064 865 (toll free)

Resources for leaving prison

Remand Release Assistance Program (RRAP)

The RRAP is for people who have been held on remand (perhaps in a police cell, or the Melbourne Metropolitan Remand Centre) while they wait to go to Court.

If the Court releases someone on bail or a community corrections order, that person can get help from the program.

The program can help with information about:

- Centrelink payments and services
- Finding crisis accommodation
- Getting health services (like accessing medication)
- Getting help with drug and alcohol problems
- Collecting personal property and money from prison.

Centrelink

Prisoners can talk with a Centrelink Prison Liaison Officer while they are in prison. The Liaison Officers will be able to say whether the prisoner will be eligible for government payments and supports when they're released (payments like Newstart Allowance, Disability Support Pension, Parenting Payment, or an Aged Pension, and supports like a Health Care Card or Rent Assistance).

Speak to the Transition coordinator to make a Centrelink appointment a few weeks before your release.

When you are released from prison you are given a discharge form. You can take that form to Centrelink and follow up on any available payments or supports.

Job Capacity Assessment

Centrelink may ask a person to do a Job Capacity Assessment (JCA). This is an assessment that looks at how someone's medical condition or disability affects their ability to work and whether that person would benefit from employment assistance. This assessment is also used to help determine whether someone is eligible for the Disability Support Pension.

Centrelink Crisis Payment

The Centerlink Crisis Payment is a one-off payment designed to help people who have experienced difficult or extreme circumstances, including being released from prison.

Some key features:

- a person can apply for a crisis payment up to 21 days before release from prison
- If eligible, the payment can be received on the day of release
- payment goes into a bank account or onto an Electronic Benefit Transfer (EBT) Card

An agency locator and crisis payments link can be found on the website.

Tel: 132 717

Website: www.humanservices.findnearest.com.au

Managing crisis payments

Although having access to a crisis payment can be enormously helpful, it also brings risks – especially for people who are impulsive, have poor judgment, or are vulnerable to being taken advantage of.

$400 is a large sum to be accessed all at once. (The EBT card can only be used once to withdraw the entire payment from an ATM.) This has implications for drug and alcohol abuse, gambling, and reoffending.

Support people can help with thinking how to best manage a lump sum of this size.

Housing and finance

Many people don't have a home to go to when the leave prison. Getting accommodation can be very difficult - public housing wait lists are very long, and private accommodation is often expensive.

Someone leaving prison needs to have a clear idea of where they will be staying after leaving prison. The best way to do this is:

- Speak with the transition program coordinator in the prison.
- Learn what is available through the Corrections Victoria Housing Program. It can provide housing and other support to prisoners being released if they are at risk of homelessness and re-offending.
- Learn whether the Corrections Victoria Brokerage Program can help. It provides financial assistance to individuals to assist with securing long-term housing.

Personal property, money, and budgeting

Usually, a prisoner's property will be returned to them before they leave. Any money remaining in the 'personal money' account should be collected before release.

Getting back into the community after prison can be expensive. There may be many things needed such as food, toiletries, clothes, shoes, medication, accommodation, phone, transport, and entertainment. It is a good idea to work out how much money will be needed by writing down what things are needed and what they cost.

Thinking difficulties and budgeting

Many people with ABI struggle to budget for some or more of the following reasons:

- *they may not be able to systematically think through all the things that need to be in a budget;*
- *they have limitations in planning or problem solving;*
- *they struggle to attend to the task long enough to do the budget;*
- *or they struggle to monitor what they spend and compare that with their plan.*

Often it is very helpful to have a one-page budget sheet, and someone to help work out how much is available to spend on budget items.

There is a good example of a budget in the Getting Started booklet (called The First Week) available at the Department of Justice.

Website: vacro.org.au

Employment

Information about getting employment is available in prison.

The Government operates 'jobactive'. Jobactive services can help you with writing resumes, preparing for job interviews, learning job skills, and finding jobs.

Tel: 136268

Website: www.jobactive.gov.au

Ex-prisoners have to decide how much to tell potential employers about their criminal history. It is important to think about the advantages and disadvantages of providing this information. Many employers do police-record checks and find out about someone's history of offences that way, so trying to keep it secret may not work.

Potential employers don't need to know someone's entire history. If someone decides to tell a potential employer about their criminal history, they should keep it brief. They can say they have learned from the experience and have made positive changes. They might be able to point out that they have had a clean slate for many years. Focus the conversation on individual strengths relevant to the job.

Job agencies should be able to provide advice about this issue and guide a job seeker in how to promote themselves to an employer.

Police checks

It is common for potential employers to ask people applying for a job to do a 'Police Check'. This means that the employer will get a document from Victoria Police that details at least some of the applicant's criminal history.

It is a good idea to request a police check yourself, before you go for jobs, so that you see the Police Check report, and know what is on it, before a potential employer does.

Instructions for getting a Police Check are on the police website.

Website: www.police.vic.gov.au

Coping

It is very common for people who leave prison to have difficulty coping. They may need different kinds of support – financial, advice, listening, belonging – at different times.

People with ABI, in particular, may have difficulty moving from fixed routines and structured environments to fluid, open environments where the rules and protocols are often unclear.

Sometimes just having someone to listen can help a person feel less stressed and make better decisions. It might be a friend or family member, or it might be a paid professional.

Some options for accessing support are listed on the next page.

DirectLine

24 hour alcohol and drug counselling, information and referrals.

Tel: 1800 888 236

Family Relationships Advice Line

Information and advice to anyone affected by family relationship difficulties or separation.

Tel: 1800 050 321

Lifeline

24 hour general counselling service. Anyone can call, it doesn't matter how big or small the problem might seem.

Tel: 13 11 14

MensLine

Information for men who are thinking about their anger, behaviour, relationships issues or parenting and need help or support.

Tel: 1300 78 99 78

Men's Referral Service

Support for men with anger issues. Also provides advice for families.

Tel: 1800 065 973

Suicideline

24 hour support to people who are thinking about suicide, or people who have been affected by suicide. Can refer to other services.

Tel: 1300 651 251

WIRE

Support, advocacy and information for women.

Tel: 1300 134 130

BrainLink

A person diagnosed with acquired brain injury (ABI) may be eligible for ABI-specialist support services like case management, counselling, behaviour change support, physical rehabilitation, family counselling, or group programs. BrainLink can help find specialist ABI services.

Tel: 1800 677 579

Insurance compensation

If a person's injury was from a motor vehicle accident or a work-related accident, they may be eligible for compensation through an insurance agency such as the TAC or WorkSafe. Alternatively, a person may be eligible for disability supports through the National Disability Insurance Scheme (NDIS).

The insurer may be able to pay for services such as medical appointments and medications, case management, physiotherapy, occupational therapy, psychology, and other approved services.

When the insurer has approved services as part of a claim for injury or damages, these are called 'compensable services'. If someone leaving prison has an existing insurance claim and requires services upon release, they should contact the insurer to reactivate their claim.

A person who is not eligible for supports through insurers may be eligible for supports through the public system, the Department of Health and Human Services (DHHS).

TAC

Tel: 1300 134 130

Website: www.tac.vic.gov.au

Worksafe

Tel: 1800 136 089

Website: www.worksafe.vic.gov.au

NDIS

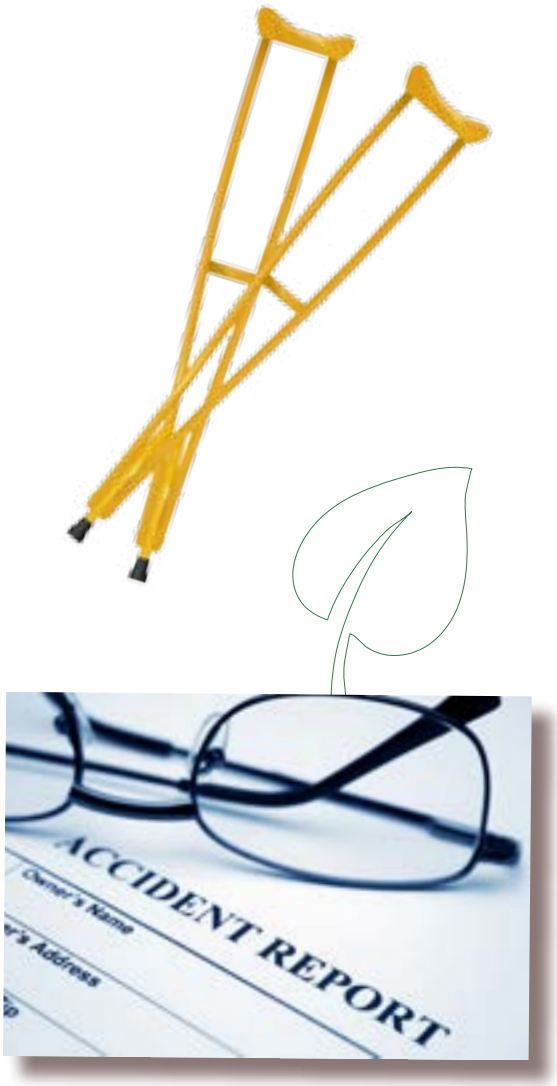
Tel: 1800 800 110

Website: www.ndis.gov.au

DHHS Intake and Response Service

Tel: 1800 783 783

Website: www.dhs.vic.gov.au



Compensable status

Public and private service systems

Many people in prison have an ABI that is 'compensable', meaning that they are eligible for health services paid for by an insurance scheme. These services are not available while someone is in prison.

When someone is released, however, these services can be re-activated. Individuals, families, and service providers should always check a person's compensation status by phoning the insurer (TAC, WorkCover, other private insurer). If someone does not have an existing claim, they may be able to make one depending on the cause of their injury and time since the accident.

Often, people with an ABI have a poor memory of services they have received. Providers should always check the compensable status of clients.

Online

The 'Getting Started' booklet provides practical advice about what to do during the first week out of prison. It is easy to access on the internet or from VACRO.

Website: www.vacro.org.au

There is a wealth of information about these topics on the Corrections Victoria website:

- visiting or contacting a prisoner
- community corrections
- prison
- parole
- release

Website: www.corrections.vic.gov.au

Services

There are agencies that specialise in working with people who have left prison.

Most of their programs are by referral.

ACSO

(Australian Community Support Organisation) provides ex-prisoners with a range of services including counselling and referral.

Tel: (03) 9413 7000

Website: www.acso.org.au

Brosnan Centre

The Brosnan Centre provides support for offenders under the age of 23. It also offers support for Vietnamese offenders.

Tel: (03) 9387 1233

Website: www.jss.org.au

Bridge Foundation

The Bridge Foundation provides assistance for ex-prisoners in the Gippsland area to reintegrate into the community. (They do not provide housing).

Tel: 0409 556 932

Website: www.bridgefoundation.org.au

Prison Fellowship

The Prison Fellowship can visit prisoners, and provide rehabilitation programs. They work with the children and families of prisoners and hold regular sporting matches with prisoners.

Tel: (03) 9848 1224

Website: www.prisonfellowship.org.au

VACRO

(Victorian Association for the Care and Resettlement of Offenders)

VACRO offers information and support to offenders and their families.

Tel: 1800 049 871 (freecall)

Website: www.vacro.org.au

Flat Out Inc.

Flat Out Inc. a statewide advocacy and support service for women who have had contact with the criminal justice and/or prison system in Victoria. Flat Out works to prevent women from going to prison, and keeping women out of prison once they are released.

Tel: (03) 9372 6155

Website: www.flatout.org.au

Victoria Legal Aid

Helps people with legal problems in areas of criminal law, family law and some civil law matters.

Tel: 1800 677 402 (freecall)

Website: www.legalaid.vic.gov.au

Material aid

People leaving prison may be eligible for material aid or emergency relief.

Food vouchers or parcels and clothing vouchers are available from:

St Vinnies

Tel: 1300 305 330

Salvation Army

Tel: (03) 9653 3213

Free meals

Sacred Heart Mission in St Kilda.

Tel: (03) 9537 1166

St Mary's House of Welcome in Fitzroy.

Tel: (03) 9417 6497

St Vinnies operate soup vans and breakfast clubs in many suburbs.

Tel: 1300 305 330

The Victorian Charter of Human Rights

The Victorian Charter of Human Rights (the Charter) is important to know about when you are working with people with disabilities in the criminal justice system. Although a Court's task is to evaluate evidence and apply the law, that activity can be influenced by the need to consider a person's human rights.

What is the Victorian Charter of Human Rights and Responsibilities?

The Victorian Charter of Human Rights and Responsibilities 2006 has been part of the law in Victoria since 2008. It sets out various human rights of people in Victoria that should not be breached.

Although people can't go to a Court just to complain about their human rights being breached, their lawyer can use human rights arguments as part of their legal argument in other cases. The Charter can be used to guide the way laws are interpreted and applied in a Court of law.

The Charter should also be used by public authorities (such as government departments) to guide the way they make decisions and how they behave. Although the Charter doesn't say anything about people who have an ABI, lawyers can sometimes use human rights arguments when they are representing people who have an ABI in Court.

Lawyers should use Charter arguments to challenge decisions made at every stage in the criminal justice system where their client who has an ABI has been denied their rights.

The 20 rights guaranteed in the Charter (brief list of key ideas)

1: Recognition and equality before the law
2: Right to life
3: Freedom from torture and cruel, inhuman or degrading treatment
4: Freedom from forced work
5: Freedom of movement
6: Privacy and reputation
7: Freedom of thought, conscience, religion and belief
8: Freedom of expression

9: Peaceful assembly and free association
10: Protection of families and children
11: Taking part in public life
12: Cultural rights
13: Property rights
14: Liberty and security
15: Humane treatment in prison or when detained
16: Rights of children in criminal processes
17: Fair hearing
18: Rights in criminal proceedings
19: Not being tried or punished twice
20: Not being prosecuted or punished under retrospective criminal law.

The effect of the Charter on interpretation and development of laws

The Charter says that all other laws must be interpreted in a way that is compatible with human rights. This means that any law that affects people who have an ABI must be interpreted in the light of the human rights set out in the Charter.

The ability of someone to understand their rights when the police interview them is very relevant because the Court has discretion to exclude evidence of admissions because they have been unfairly obtained. One of the human rights in the Charter is that 'all people are entitled to the equal protection of the law'. Because of this, lawyers could argue that there is a need to focus on the special needs of disadvantaged groups, such as people who have an ABI, when considering questions such as the fairness of admitting confessional material in a criminal case.

The effect of the Charter on conduct of public authorities

The Charter makes it unlawful for a public authority to act in a way that is incompatible with human rights or to fail to give proper consideration to human rights in making a decision.

Public officials, statutory bodies, Councils, Ministers and Victoria Police are all 'public authorities' under the Charter. So, whenever a public official or statutory body is given a legal function that affects people who have an ABI, they must consider the human rights of those people, as listed in the Charter.

You can see a copy of the Charter on the website of the Victorian Equal Opportunity and Human Rights Commission:
www.humanrightscommission.vic.gov.au

4

Glossary

What do these words mean?

A

accused
a person charged with committing an offence (breaking the law).

adjourn
to put a case off until a later date. For example you might ask the Court to adjourn (delay) your court case until a later date while more medical information is gathered.

affidavit
a written statement confirmed by oath or affirmation, for use as evidence in court.

alleged
said to be the case, but not yet proved. The police will allege someone has committed a crime, and the Court then decides if that (the allegation) is true.

arrest
stop a person leaving. The police will arrest someone (hold them in custody) if they think that person has broken the law.

B

bail
getting bail means that someone avoids having to stay in police custody while they wait for their Court hearing, so long as they agree to conditions like reporting to the police, living at a certain place or having someone act as a **surety** for them.

bail justice
a person who can give or refuse to give you bail while you are in police custody.

barrister
a lawyer who specialises in appearing at Court. They may not have much direct contact with the client, leaving that to the solicitor (also a lawyer) who prepares the case.

beyond reasonable doubt

level of proof needed in criminal cases for a magistrate or jury to decide whether a person is guilty.

breach

to break a law or court order. For example, if a person is required by law to meet with their Community Corrections Officer but they don't, then they have breached their conditions.

C

capacity

(legal capacity) the ability of a person to understand and weigh up relevant information, and communicate their legal consent to an action or arrangement. A person can understand, retain, believe, evaluate (that is, process) and weigh up relevant information.

charge

this term is used in two ways: (i) as a verb: when the police charge a person, it means they formally accuse that person of committing a crime (ii) as a noun: a person will have to defend themselves against the charge in Court.

charge sheet

a document that lists all the offences a person has been charged with.

cognitive impairment

difficulties with thinking, such as when a person has trouble with remembering, concentrating, planning, reasoning and problem solving.

Community Correction Order

(CCO) a penalty the magistrate can give a person found guilty of committing a serious offence. Instead of going to prison, the Court orders that they serve a sentence in the community. The CCO has conditions such as being supervised by a corrections worker, doing unpaid community work, having treatment and rehabilitation, or not being allowed to contact specific people.

consolidated plea

when more than one separate set of charges is heard as a plea of guilty on the same date.

conviction

the Court finds someone guilty of a criminal offence. If a judge or magistrate finds a person guilty, they can give them a penalty with or without conviction. This depends on how serious the offence is and whether the person has any prior convictions.

court order

a document from the Court that says a person must do something. It is also a document that sets out their penalty if they are found guilty of breaking the law.

criminal record

information about previous offences that is kept on the police Law Enforcement Assistance Program (LEAP) database.

custody

to be in the care and control of someone under lawful authority. Being taken into custody means a person has been arrested by police and detained at the watch house or prison.

D, E, F

defendant

a person who has been charged with breaking the law or has been sued in court by another person.

diversion

a diversion program is a way to deal with a person's criminal matter out of the Court system and to give them a chance to avoid a criminal record.

duty lawyer

a lawyer who helps people who do not have their own lawyer on the day of their Court hearing. They can give free legal advice and may be able to represent people in Court.

enforcement action

After a court has made an order, a further court order may sometimes be needed to make the person do what a court ordered them to do. For example, a court may order that a person owes money to another person (this is called a 'judgement debt'). The person owed the money can then ask another court to make an order that the money must be paid (this is called an enforcement order).

forensic procedure

examination of the body of a person suspected of committing an offence, or the taking of certain body samples, such as blood, hair, saliva, and mouth or dental impressions and taking notes about recent injuries. A specially trained doctor, nurse or dentist must do these procedures.

G, H, I

independent person

an adult who must be with a youth under 18 years of age during police questioning when the youth's parents or guardian cannot be there.

Independent Third Person

(ITP) a trained person from the Office of the Public Advocate who can be present during police questioning to assist a person with cognitive impairment to understand the interview process and questions.

indictable offence

a serious criminal offence (e.g., aggravated burglary, indecent assault, drug trafficking, murder) usually dealt with by a trial with a judge and jury in the County Court or Supreme Court.

L, M, N

lawyer

a general term for a person trained in the law who can advise people about the law. The term includes solicitors, legal practitioners, and barristers.

legal practitioner

a lawyer (see above).

Magistrate
a person in the Magistrate's Court who decides whether an accused person is guilty or not and what punishment they get.

Member
A person who sits on the VCAT tribunal and will listen to and make decisions about a case.

mental impairment
a disability, including acquired brain injury, mental illness, intellectual disabilities, and dementia, that can affect a person's ability to think, plan, remember, organise, and so forth.

no comment
what a person should say when they do not want to say anything to police.

O, P, Q

offence
an illegal act (a crime).

offender
person who has committed a crime.

part-heard
when a case has started but all the witnesses have not been heard so the case has to be adjourned and then continued on another day.

plea/plead
a plea is an accused person's response in the Courtroom to the charge. They can plead guilty or not guilty.

R, S

Registrar
a person who works for the Court doing administrative work.

revoke
to cancel something, such as a Court Order.

sentence

(1) If the Magistrate finds a person guilty, they will sentence them (give them a penalty and/or conviction) according to the offence they committed. (2) The penalty is referred to as the sentence.

serve

this term is used two ways: (1) Being served refers to the legal delivery of a document, such as a summons; or (2) when a person serves a sentence (e.g. time in prison), they are following orders from a Court.

sheriff

a person with legal authority to take action against people who do not comply with their debt-related court orders. For example the sheriff may take control of a person's property, or apply wheel clamps to their car or arrest them if they do not do what it says in a Court Order.

solicitor

a lawyer who can provide legal advice, represent people at Court, and prepare legal documents. Solicitors will brief a barrister if the case is complex and requires specialist representation at Court.

special circumstances

if a person finds it difficult to avoid getting fines because of an ABI, mental illness, intellectual disability, drug addiction or homelessness.

stand down

to put a case on hold briefly. When a case is stood down it is usually called back on that same day for completion.

subpoena

a document that says a person must appear in Court or give certain documents to the Court.

summary offence

minor criminal offences (e.g., road traffic offences such as unlicensed driving, begging, property damage, offensive behaviour or being drunk in a public place) that are usually dealt with in the Magistrates' Court.

summons
a Court document that tells a person when they must go to Court to answer police charges.

surety
a person who promises money or property if an accused person does not meet their bail conditions.

T, U

triable summarily
when an indictable offence can be dealt with by a Magistrate in the Magistrates' Court instead of a judge and jury in a higher Court. This is called a 'Summary Hearing'.

trial
a Court case in front of a judge and jury, or, a judge alone.

undertaking
a promise to the Court to do something, or or not to do something (e.g. not going near a certain place).

V, W, X, Y, Z

VCAT
Victorian Civil and Administrative Tribunal (VCAT) deals with civil (not criminal) matters, including guardianship and administration matters.

warrant
a Court document that says what the police or sheriff can do, such as arrest a person or search their house.

witness
a person who gives evidence in writing or by coming to Court. Also a person who is present when someone signs a document and confirms that the signature is genuine by adding their own signature.

witness summons
a document used to summon a witness to come to Court to give evidence or to give in documents as evidence.

5

Resources and Contact Details

Resources for ABI

Booklet

Acquired Brain Injury: The Facts. The practical guide to understanding and responding to Acquired Brain Injury and Challenging Behaviours. (Fourth ed).

Website: synapse.org.au

ABI Information Kit

Website: brainlink.org.au

Fact sheets

Website: synapse.org.au

Service Finder (for finding ABI services in Victoria)

Website: brainlink.org.au

Booklets and Information for family members

Preparing for a criminal hearing

Families in Waiting (2014). Geelong, Australia. Vacro.

Website: vacro.org.au

Caught Out: What Now?

A series of booklets and fact sheets for families of offenders

Website: vacro.org.au

Training

Training in ABI is available from several public and private services.

Contact the state-funded information provider for further information.

Website: www.brainlink.org.au

Resources for the legal system

Victorian Charter of Human Rights

Website: www.humanrightscommission.vic.gov.au

Legal information

The Law Handbook

The Law Handbook Online is a practical guide to the law in Victoria in the form of a comprehensive, plain english, web-based legal resource.

Website: www.lawhandbook.org.au

Law Help Directory 2015

Website: www.victorialawfoundation.org.au

Non-legal advocacy

DARU (the Disability Advocacy Resource Unit)

Tel: (03) 9639 5807

Website: www.daru.org.au

Where to find a lawyer

Ask for a representative who is familiar with ABI or cognitive impairment.

Disability Discrimination Legal Service

Tel: (03) 9654 8644

Website: www.ddls.org.au

Federation of Community Legal Centres

Tel: (03) 9652 1500

Web: www.fclc.org.au

Law Institute Victoria (LIV)

Find a lawyer referral service.

Tel: (03) 9607 9311

Web: www.liv.asn.au/referral

Mental Health Legal Centre Inc.

Tel: (03) 9629 4422

Website: www.communitylaw.org.au

Victorian Aboriginal Legal Service

Tel: 1800 064 865

Website: www.vals.org.au

Aboriginal Family Violence Prevention and Legal Service

Tel: 1800 105 303

www.fvpls.org

Victoria Legal Aid

Tel: 1800 677 402 (freecall)

Website: www.legalaid.vic.gov.au

Resources for Court

Information sources

Booklet

Your Day In Court – A guide for people going to the Magistrates' Court for minor criminal offences.

Weblink: www.legalaid.vic.gov.au

Video

Virtual Court room – provides a sense of what it is like in a Court

www.neighbourhoodjustice.vic.gov.au

All courts

Court Services Victoria: www.courts.vic.gov.au

Magistrates' Court

www.magistratescourt.vic.gov.au

County Court

www.countycourt.vic.gov.au

Supreme Court

www.supremecourt.vic.gov.au

Coroners Court

www.coronerscourt.vic.gov.au

Drug Court

Location: Dandenong Magistrates' Court (Cnr Foster and Pulteney Streets, Dandenong 3175).

Tel: (03) 9767 1344

Website: www.magistratescourt.vic.gov.au

Koori Courts

County Court Koori Court

Website: www.countycourt.vic.gov.au

Magistrates' Court Koori Court

Website: www.magistratescourt.vic.gov.au

Mental Health Tribunal

Website:www.mht.vic.gov.au

Victorian Civil and Administrative Tribunal (VCAT)

Website: www.vcat.vic.gov.au

Victims of Crime Assistance Tribunal (VOCAT)

Website: www.vocat.vic.gov.au

Victims of Crime information and support

Website: www.victimsofcrime.vic.gov.au

Resource booklet for victims of crime: 'A Victim's Guide to Support Services and the Criminal Justice System':

Website: www.justice.vic.gov.au

Neighbourhood Justice Centre (NJC)

For City of Yarra residents.

Tel: (03) 9948 8777

Website: www.neighbourhoodjustice.vic.gov.au

Court services

Booklet: *Guide to specialist Courts and Court support services*

Website: www.magistratesCourt.vic.gov.au

Court Network

Tel: 1800 681 614

Website: www.Courtnetwork.com.au

Assessment and Referral Court (ARC) List

Only for Melbourne residents who are pleading guilty.

Website: www.magistratescourt.vic.gov.au

Court Integrated Services Program (CISP)

Location: Magistrates' Court in Melbourne, Sunshine and Morwell.

Tel: (03) 9628 7936

Referral forms on website:

Website: www.magistratesCourt.vic.gov.au

CREDIT/Bail Support Program

Court Referral & Evaluation for Drug Intervention & Treatment.

Brochure: www.magistratescourt.vic.gov.au

Service home site: www.magistratescourt.vic.gov.au

Diversion Program

Brochure: www.magistratescourt.vic.gov.au

Enforcement Review Program (ERP)

www.magistratesCourt.vic.gov.au

Postal address:

Special Circumstances Registrar. Infringements Court.

PO Box 14487, Melbourne: VIC 8001

Mental Health Court Liaison Service (MHCLS)

Talk to your lawyer and your GP, psychologist, or psychiatrist.

Freecall: 1800 677 402

Web: www.legalaid.vic.gov.au

Villamanta Disability Rights Legal Service Inc.

Tel: (03) 5227 3338

Web: www.villamanta.org.au

Neighbourhood Justice Centre

Tel: (03) 9948 8777

www.neighbourhoodjustice.vic.gov.au

AED (Association of Employees with Disability) Legal Centre

Tel: (03) 9639 4333

Web: www.aed.org.au

Resources for leaving prison

Information sources

VACRO 'Getting Started' booklet: *The First Week*

Website: www.vacro.org.au

Website: www.justice.vic.gov.au

Corrections Victoria website

Website: www.corrections.vic.gov.au

Transition programs

At the time of writing this booklet changes in programs and funding were taking place. Listed here are the main services that provide Transition Programs. Contact them directly to confirm which programs suit your situation.

Jesuit Social Services (JSS)

Tel: (03) 9421 7600

Website: www.jss.org.au

Australian Community Support Organisation (ACSO)

Tel: (03) 9413 7000

Website: www.acso.org.au

Victorian Association for the Care and Resettlement of Offenders (VACRO)

Tel: 1800 049 871

Website: www.vacro.org.au

Victorian Aboriginal Legal Service (VALS)

Tel: (03) 9418 5999

Website: vals.org.au

Centrelink, housing and money

Speak to the transition worker to make a Centrelink appointment a few weeks before your release. Crisis payments are made through Centrelink.

Tel: 132717

Website: humanservices.findnearest.com.au

Corrections Victoria

Housing Program and Corrections Victoria Brokerage Program

See budget in the Getting Started booklet.

Website: www.justice.vic.gov.au

Employment

Jobactive services (replaces previous services).

Tel: 136268

Website: www.jobactive.gov.au

Police checks

Instructions on police website:

www.police.vic.gov.au

Help with coping

DirectLine

24-hour alcohol and drug counselling, information and referrals.

Tel: 1800 888 236

Family Relationships Advice Line

Information and advice to anyone affected by family relationship difficulties or separation.

Tel: 1800 050 321

Leadership Plus

Indpedent advocacy organisation specialising in ABI and CALD.

Tel: (03) 9489 2999

Website: http://leadershipplus.com

Lifeline

24 hour general counselling service. Anyone can call, it doesn't matter how big or small the problem might seem.

Tel: 13 11 14

MensLine

Information for men who are thinking about their anger, behaviour, relationships issues or parenting and need help or support.

Tel: 1300 78 99 78

Men's Referral Service

Support for men with anger issues. Also provides advice for families.

Tel: 1800 065 973

Suicideline

Tel: 1300 651 251

WIRE

For women: support, information and referrals on any issues.

Tel: 1300 134 130

BrainLink

Specialist ABI services.

Tel: 1800 677 579

Insurance compensation and private services

If not eligible for insurance support, go to these government agencies.

Department of Health and Human Services (Vic)

Website: www.dhs.vic.gov.au

TAC

Tel: 1300 134 130

Website: www.tac.vic.gov.au

Worksafe

Tel: 1800 136 089

Website: www.worksafe.vic.gov.au

NDIS

Tel: 1800 800 110

Website: www.ndis.gov.au

Service agencies

Agencies that specialise in working with people who have left prison. Mostly by referral.

ACSO

(Australian Community Support Organisation)

Tel: (03) 9413 7000

Website: www.acso.org.au

Jesuit Social Services (JSS)

Tel: (03) 9387 1233

Website: www.jss.org.au

The Bridge Foundation

Gippsland area reintegration.

Tel: 0409 556 932

Website: www.bridgefoundation.org.au

The Prison Fellowship

Tel: (03) 9848 1224

Website: www.prisonfellowship.org.au

VACRO

(Victorian Association for the Care and Resettlement of Offenders)

Tel: 1800 049 871 (free call)

Website: www.vacro.org.au

Flat Out Inc.

Advocacy and support for women.

Tel: (03) 9372 6155

Website: www.flatout.org.au

Material aid

St Vinnies

Tel: 1300 305 330

Salvation Army

Tel: (03) 9653 3213

Sacred Heart Mission in St Kilda

Tel: (03) 9537 1166

St Mary's House of Welcome in Fitzroy

Tel: (03) 9417 6497

St Vinnies soup vans and breakfast clubs

Tel: 1300 305 330

Contact checklist

To do	✓	Contact person/number	Follow-up action