



**NATSILS**

**NATIONAL ABORIGINAL & TORRES  
STRAIT ISLANDER LEGAL SERVICES**

28 March 2019

Mr Michael Lye  
Deputy Secretary  
Disability and Carers  
Department of Social Security

Dear Mr Lye,

**Feedback on the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability**

The National Aboriginal and Torres Strait Islander Legal Services (**NATSILS**) is the peak national body for Aboriginal and Torres Strait Islander Legal Services (**ATSILS**) in Australia. NATSILS brings together over 40 years' experience in the provision of legal advice, assistance, representation, community legal education, advocacy, law reform activities and prisoner through-care to Aboriginal and Torres Strait Islander peoples in contact with the justice system. NATSILS are the experts on the delivery of effective and culturally responsive legal assistance services to Aboriginal and Torres Strait Islander peoples. This role also gives us a unique insight into access to justice issues affecting Aboriginal and Torres Strait Islander peoples. NATSILS represent the following ATSILS:

- Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd (**ATSILS Qld**);
- Aboriginal Legal Rights Movement Inc. (**ALRM**);
- Aboriginal Legal Service (NSW/ACT) (**ALS NSW/ACT**);
- Aboriginal Legal Service of Western Australia Ltd (**ALSWA**);
- North Australian Aboriginal Justice Agency (**NAAJA**);
- Tasmanian Aboriginal Community Legal Service (**TACLS**); and
- Victorian Aboriginal Legal Service Co-operative Limited (**VALS**).

NATSILS welcomes the Australian Government's commitment to establish the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. This is an important move that echoes the calls of disability organisations Australia-wide.

NATSILS endorses the submission from the Disabled People's Organisations Australia, and the supplementary submission from First People's Disability Network, which raise important points around Australia's international human rights obligations, the centrality of the lived experience of people with disability to the Royal Commission, systemic causes and issues including poverty, redress, accountability and research.

In addition we note the following recommendations.

## 1. Include the experiences of people with disability in the justice system

We believe the current Terms of Reference are broad in scope, covering “the extent of violence, abuse, neglect and exploitation experienced by people with disability in all settings and contexts.” This is appropriate. We are strongly of the view that the scope of the Royal Commission must capture the experiences of people with disability in the justice system:

People with disabilities, particularly a cognitive or psychosocial disability, are overrepresented in the criminal justice system in Australia—comprising around 18 percent of the country’s population, but almost 50 percent of people entering prison.

In particular, the Royal Commission needs to consider and investigate the experiences of Aboriginal and Torres Strait Islander people with disability in the justice system:

Aboriginal and Torres Strait Islander people are especially overrepresented in the prison community. While they comprise just 2 percent of the national population, as of June 2017, they made up 28 percent of Australia’s full-time adult prison population. By 2020, the proportion of Aboriginal and Torres Strait Islanders in custody is expected to reach 50 percent of the prison population.

Within this group, Aboriginal and Torres Strait Islander people with disabilities are even more likely to end up behind bars. Multiple forms of disadvantage mean that Aboriginal and Torres Strait Islander people are more likely to end up in jail than non-indigenous peers, including greater likelihood as youth and adults of living in out-of-home-care, being homeless, or having earlier and more frequent contact with the criminal justice system.

There is a lack of data on the full extent of Aboriginal and Torres Strait Islander prisoners with disability in prisons, which needs to be explored by the Royal Commission. This is compounded by the difficulties with and access to diagnosis, particularly of Fetal Alcohol Spectrum Disorder (FASD).

However, we do know that many Aboriginal and Torres Strait Islander children in prison (6% of the youth population but 60% of the youth prison population) have a form of cognitive impairment. A Telethon Institute study found that nine out of 10 children at Banksia Hill Detention Centre in Western Australia had at least one form of severe neurodevelopmental impairment, while 36% were found to have FASD.

The abuses that children, particularly Aboriginal and Torres Strait Islander children, face in police watch-houses and youth prisons in Australia is well documented. This includes solitary confinement, inappropriate use of handcuffs and other restraints, use of force, racism and sexual harrasment from guards, lack of access to medical treatment and exercise, among others.

There are many supports that Aboriginal and Torres Strait Islander people with disability need to fairly access the justice system. Below is an example which demonstrates some of the issues and supports needed.

### **CASE STUDY: ATSILS, NATSILS, MELBOURNE UNIVERSITY, IDRS, FIRST PEOPLES DISABILITY NETWORK UNFITNESS TO PLEAD PROJECT**

ATSILS worked with Melbourne University researchers to develop The Unfitness to Plead Project, which sought to develop practical and legal options to address the problem of people with cognitive disabilities being found unfit to plead and subject to indefinite detention.

The program did this by developing and introducing cost-effective, culturally appropriate supports for those at risk of being found unfit to plead into community legal centres in Victoria (the Victorian Aboriginal Legal Service (VALS)), New South Wales (Intellectual Disability Rights Service (IDRS)) and the Northern Territory (the North Australian Aboriginal Justice Agency (NAAJA)).

According to the research team's summary report, people with cognitive disabilities face barriers across the entire criminal justice system. Disadvantages identified include:

- Inaccessible court proceedings that rely on complex language;
- Inconsistent availability of support throughout court proceedings;
- Under-resourced legal services;
- Long delays in proceedings involving accused people with cognitive disabilities;
- The 'criminalisation of disabilities' whereby the environmental causes of difficult behaviour are ignored or played down, or behaviour associated with a disability is misinterpreted as defiance.

Summary of the above project and what can be done to support Aboriginal and Torres Strait Islander people (and the broader community) in the justice system was developed by researchers at Melbourne university in collaboration with ATSILS and FPDN and can be found [here](#). A case study from the project demonstrates that "a relatively modest program intervention at a crucial point in criminal justice proceedings can improve outcomes for accused persons with cognitive disability",<sup>1</sup> and provide potentially hundreds of thousands of dollars in cost savings to government per client. The report also found that the program: "[A]ppears to reduce the need for unfitness to plead determinations by assisting accused persons to participate in proceedings and exercise their legal capacity. Such formal support is increasingly shown to be effective for many persons with disabilities and appears to provide a cost-effective and rights-affirming practice for securing access to justice."<sup>2</sup>

NATSILS, Melbourne University, the ATSILS and First Peoples Disability Network have been working together to demonstrate the importance for disability support workers to be co-located in each of the ATSILS and in FPDN. The support workers would assist clients with cognitive and mental health disabilities who have a disability particularly when they are young people or are at risk of being found unfit to stand trial, or who are at risk of being unable to participate in proceedings against them. The proposal builds on existing, evidence-based programs for providing support to accused persons with cognitive and psychiatric disabilities but fills a major gap in the provision of legal services to Aboriginal and Torres Strait Islander people. This proposal brings together and builds upon two initiatives that have developed separately from within the legal sector and the disability sector to build a nationally consistent model of support for people with cognitive and psychosocial disability who come in contact with the justice system.

The Law Council's Justice Project recommended that governments increase resourcing of disability support workers and advocates to provide support for people with disability who require it, particularly people with cognitive impairment or mental health conditions, at every stage of their involvement with the justice system.<sup>3</sup> There are a number of findings and recommendations from this project that would be instructive to the Royal Commission.

This scope of the Royal Commission must extend beyond prisons to police contact and watchhouses, justice transport (ie between facilities), courts and other justice services provided to Aboriginal and Torres Strait Islander people with disability.

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<sup>1</sup> R McCausland, R Reeve, P Gooding, E Baldry, *Cost Benefit Analysis of Support Workers in Legal Services For People with Cognitive Disability* (2017), 3,

<[https://socialequity.unimelb.edu.au/\\_\\_data/assets/pdf\\_file/0003/2477046/Unfitness-to-Plead-Project-Cost-Benefit-Analysis.pdf](https://socialequity.unimelb.edu.au/__data/assets/pdf_file/0003/2477046/Unfitness-to-Plead-Project-Cost-Benefit-Analysis.pdf)>.

<sup>2</sup> Ibid.

<sup>3</sup> Law Council of Australia, *The Justice Project, Part 1: People with Disability* (2018),

<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/People%20with%20Disability%20%28Part%201%29.pdf>.

## **Include a focus on race**

The Royal Commission must consider the multiple layers of discrimination experienced by Aboriginal and Torres Strait Islander people with disability. Many Aboriginal and Torres Strait Islander people do not have equal access to the National Disability Insurance Scheme, or to culturally safe services. There is a particular disparity in access to services for Aboriginal and Torres Strait Islander people living in regional and remote areas.

Aboriginal and Torres Strait Islander people are more likely to have experienced violence, but their experiences are less likely to be heard, which is why the Royal Commission must have a dedicated focus on their experiences. Aboriginal and Torres Strait Islander people who experience other disadvantage, including low income, unemployment, housing insecurity, substance use, and living with disability or long-term health condition, were more likely to have experienced violence. Violence against Aboriginal and Torres Strait Islander women and children in particular is a national epidemic, leading to inequality and long-term disadvantage. Aboriginal and Torres Strait Islander women are 32 times more likely to be hospitalised because of family violence, 10 times more likely to die from a violent assault, and three times more likely to be subjected to sexual assault than other women. Aboriginal and Torres Strait Islander children are also more likely than non-Indigenous children to be the subject of a substantiated report to child protection agencies due to emotional or physical abuse and sexual assault.

## **Fund Aboriginal community controlled disability services to support participation**

We are of the view that the Government must fund Aboriginal and Torres Strait Islander community-controlled disability support services to provide culturally safe services that enable Aboriginal and Torres Strait Islander people with disability to equally participate in the Royal Commission. This should include direct support services as well as for systemic advocacy to help people be informed about and engage with the Royal Commission. We support the suggested amendment from the Disability People's Organisation to facilitate this.

For further enquiries please contact Karly Warner, NATSILS Executive Officer by email at [kwarn@vals.org.au](mailto:kwarn@vals.org.au).

We look forward to the progression of this important work.

Yours sincerely,



Cheryl Axleby  
Co-chair, NATSILS  
Co-Chair, Change the Record