

Submission

Royal Commission into Violence, Abuse, Neglect  
and Exploitation of People with Disability  
2020

ANTAR



## About ANTAR

**ANTAR is a national advocacy organisation working for Justice, Rights and Respect for Australia's First Peoples. We do this primarily through campaigns, advocacy, and lobbying.**

Our current national campaigns include:

- Constitutional Recognition and Equality – for Constitutional change to recognise Australia's First Peoples and remove discriminatory elements from our founding document; and
- Advocating for treaty and agreement-making processes across Australia.

We also engage in national advocacy across various policy and social justice issues affecting Aboriginal and Torres Strait Islander communities, including anti-racism campaigns, native title, languages and cultures, economic and community development, remote communities' services and infrastructure, health, and human rights.

ANTAR is a foundational member of the Close the Gap Campaign Steering Committee, the Change the Record Campaign Steering Committee, and the Redfern Statement Alliance. ANTAR has been working with Aboriginal and Torres Strait Islander communities, organisations and leaders on rights and reconciliation issues since 1997. ANTAR is a non-government, not-for-profit, community-based organisation.

**“In modern times, the pages on disability have been excluded from the book of Australian Indigenous policies, such as Closing the Gap. And whole chapters on disability have been ripped from every single inquiry into why so many Aboriginal and Torres Strait Islander people end up in prison. Within Australia’s social record, Aboriginal and Torres Strait Islander people with disability have similarly just disappeared.”<sup>1</sup>**

Dr Scott Avery

## **Introduction**

**Thank you for the opportunity to provide some comments to inform the consideration of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. This Royal Commission inquiry is critical to understanding the needs of, and barriers faced by, people with disability in Australia and we offer our assistance wherever possible.**

ANTAR has a long interest in the progress of First Nations Peoples in Australia and we have worked closely for many years with the First Peoples Disability Network (FPDN) through the Close the Gap and Change the Record campaigns, to advocate for the rights of Aboriginal and Torres Strait Islander peoples with a disability.

This submission draws upon and commends the work and leadership of FPDN, and endorses the submissions made by Just Reinvest NSW, the Lowitja Institute, the Australian Human Rights Commission and the National Aboriginal

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<sup>1</sup> Avery, S (2018) [Culture is Inclusion: A narrative of Aboriginal and Torres Strait Islander people with disability](#). First Peoples Disability Network (Australia). Sydney, Australia.

and Torres Strait Islander Legal Services (NATSILs) as well as the work of experts such as Dr Scott Avery.

Rather than addressing the specific questions outlined in the Commission's discussion papers, in our submission we want to highlight some key areas for the Commission's consideration and to highlight key issues and solutions.

In particular, this submission will make comment on the impact of systemic racism as evidenced by the disproportionate rates of incarceration. Our submission also highlights the need for solutions that are fundamentally conceived and led by Aboriginal and Torres Strait Islander people that are consistent with Australia's international human rights obligations and draws on the strength and resilience of First Nations culture.

It is essential that First Nations people with disability and their communities are heard and understood on these matters. It is critical, especially during this time, to pay attention to those who are most vulnerable in society, and the most vulnerable are Aboriginal and Torres Strait Islander people with disabilities as they face the dual and amplifying barriers of racism and ableism in our society today.

A disproportionate number of First Nations people live with disability compared with the non-Indigenous population. At the time of the 2015 Survey of Disability, Ageing and Carers, of an estimated 523,000 Aboriginal and Torres Strait Islander people living in households, almost 24 per cent reported living with a disability, against a non-Indigenous figure of 17.5 per cent.<sup>2</sup> These people are more likely to experience threats of violence, problems accessing health services, high levels of psychological distress and be detained due to their disability.<sup>3</sup>

The 2020 Covid-19 pandemic has only raised the stakes for this Royal Commission inquiry and it is critical that we do all we can to protect First Nations peoples from the virus.

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<sup>2</sup> Australian Bureau of Statistics. 2017a. 4430.0—Disability, Ageing and Carers, Australia: Summary of Findings, 2015: Aboriginal and Torres Strait Islander People with Disability. Released 20 April. Canberra: Australian Bureau of Statistics, Commonwealth Government of Australia

<sup>3</sup> [First Nations People with Disability issues paper](#) (2020)

As FPDN CEO, Damian Griffis has expressed:

‘First Nations people with disability are the most vulnerable community in this country. There are specific needs of First Nations people with disability including culturally-appropriate support and services that are required for their health and wellbeing. This has escalated during the pandemic as First Nations communities are faced with a fatal virus that can be transmitted if the correct medical supplies and equipment are not provided to minimise the risk of contracting and spreading the virus.’<sup>4</sup>

The Disability Peak Organisations Australia (DPOA) has called on all Australian governments to take appropriate and urgent actions to protect the lives of Australians with disability in the context of COVID-19. People with disability experience and are at a far greater risk of violence, abuse, exploitation and neglect than others in the population.<sup>5</sup> More than a third of people with disability report experiencing violence or abuse, and almost 50 per cent of people with disability report feeling unsafe where they live.<sup>6</sup> Women and girls with 6 disability are particularly at risk of all forms of violence and have considerably fewer pathways to safety.<sup>7</sup> With the recent lock down measures in place, it is even more pertinent to avoid neglecting this vulnerable community by ensuring that effective measures are in place to curb the threat of violence, abuse and exploitation against people with disabilities.

As Dr Avery has detailed in his seminal study ‘Culture is Inclusion’<sup>8</sup>, ‘Aboriginal and Torres Strait Islander people with disability experience an unique form of ‘intersectional discrimination’ and social inequality that is an interaction of discrimination that is both Aboriginal and Torres Strait Islander and disability related’. The reality of living in Australia in the 21st Century as a First Nations person with a disability means that you have the amplified impact of racism and able-ism creating significant barriers to the enjoyment of your rights.

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<sup>4</sup> [NITV - Urgent action needed to protect First Nations people with disability from COVID-19](#)

<sup>5</sup> [Violence Against People with Disability](#) (2019)

<sup>6</sup> National CRPD Survey (2019) Findings. Source updated.

<sup>7</sup> [Stop the Violence: Addressing Violence Against Women and Girls with Disabilities in Australia](#) (2013)

<sup>8</sup> Avery. S. (2018). [Culture is Inclusion: A narrative of Aboriginal and Torres Strait Islander people with disability](#). First Peoples Disability Network

We submit that whilst policies have been reviewed, more can be done for First Nations peoples in light of their high incarceration rates and the prejudice they receive. Australian governments need to take appropriate and urgent actions to protect the lives of Australians with disability, especially in the context of COVID-19.

## **The Australian governments must continue to work with First Peoples Disability Network as the peak organisation advocating for First Nations people with disability and their families.**

First Nations persons with a disability should not have to live with the amplified impact of racism and ableism, creating a significant barrier in their enjoyment of their rights. Such rights violations only further contribute to the continuous cycle of injustice suffered by First Nations people.

### **Human Rights Obligations**

The Convention on the Rights of Persons with Disabilities (CRPD)<sup>9</sup> is an international human rights treaty of the United Nations intended to protect the rights and dignity of people with disabilities. The social model that underpins this Convention interprets disability to be the result of the interactions between people living with impairments and barriers in the physical, attitudinal, communicational, intellectual and social.<sup>10</sup>

Article 9 of the CRPD<sup>11</sup> states that people with disability have the right to live independently and take part in all aspects of life. To achieve this, countries must take appropriate steps to give people with disability access, in the same way others have access, to things, places, transport, information and services that are open to the public. This requires that countries should take appropriate measures to remove any obstacles and barriers that people with disability face in having access to such natural aspects of life for most people in the 21st century.

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<sup>9</sup> [UN Convention on the Rights of Persons with Disabilities \(CRPD\)](#)

<sup>10</sup> Brolan, C & Harley D 2018, [Indigenous Australians, Intellectual Disability and Incarceration: A Confluence of Rights Violations](#)

<sup>11</sup> [OHCHR, Article 9 - Accessibility](#)

Article 5 of the CRPD<sup>12</sup> reaffirms that people with disability are entitled to the equal protection and equal benefit of the law. Similarly, Article 12<sup>13</sup> commits countries to ensuring that people with disability can exercise legal capacity in all aspects of their life and receive appropriate support to do this if required.

In light of the COVID – 19 pandemic, the Australian Government Department of Health has emphasised the need for people with disability to continue practising good hygiene, physical distancing and to avoid public gatherings. However, the current health system is not doing enough to ensure access and safety for Aboriginal and Torres Strait Islander people with a cognitive disability, leaving this group of people more susceptible to falling ill.<sup>14</sup>

## **Incarceration**

Since 1989, the imprisonment rate of Aboriginal and Torres Strait Islander peoples has increased 12 times faster than the rate for non-Aboriginal people. In December 2019, the rate was 2,536 prisoners per 100,000 adult Aboriginal population, compared to 218 prisoners per 100,000 non-Aboriginal population.<sup>15</sup>

Australia's First people comprise 2.8 per cent of the entire Australian population, but 28% of the prison population.<sup>16</sup> This is an alarming difference that has continued to increase year after year.

Furthermore, in the 2015 UNSW Indigenous Australians with Mental Health Disorders and Cognitive Disability in the Criminal Justice System Report<sup>17</sup>, it was observed that Australian authorities are imprisoning thousands of Indigenous people with disabilities a year. The UNSW researchers also found that Indigenous people with disabilities come into contact with police more often and at a younger age than non-Indigenous people with disabilities. This

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<sup>12</sup> [OHCHR, Article 5 - Equality and non-discrimination](#)

<sup>13</sup> [OHCHR, Article 12 - Equal recognition before the law](#)

<sup>14</sup> [Intersectional Dimensions on the Right to Health for Indigenous Peoples – A Disability Perspective](#)

<sup>15</sup> [ABS, Corrective Services](#) (2019)

<sup>16</sup> Australian Bureau of Statistics. 2017a. 4430.0—Disability, Ageing and Carers, Australia: Summary of Findings, 2015: Aboriginal and Torres Strait Islander People with Disability. Released 20 April. Canberra: Australian Bureau of Statistics, Commonwealth Government of Australia. Source updated

<sup>17</sup> [A predictable and preventable path: IAMHDCD Report](#)

shows that the government is managing these vulnerable people via prisons, rather than providing appropriate support.

First Nations people with disability who have been incarcerated are likely to experience a number of long term health issues, and are at a high risk of injury and illness following their release. This means that the specific needs for the health and wellbeing of these peoples must be appropriately understood in the prison context. Sadly, the needs of Aboriginal and Torres Strait Islander people in custody with disability and impairments are not only poorly understood, but are not give any substantive consideration.<sup>18</sup>

In a report released in 2018 by Human Rights Watch<sup>19</sup>, it was brought to light that custodial staff often misinterpreted the behaviour of people with disabilities. This led to their responses being punitive, rather than supportive. And when it comes to Indigenous inmates with disabilities, staff are provided with no culturally sensitive training, leading to gross misconduct of their dealings with such prisoners.

## **Justice Reinvestment**

Justice reinvestment is a way of working that is led by the community, informed by data and is economically responsible. A justice reinvestment framework aims to redirect funding away from the criminal justice system and diverts those funds into communities with high rates of contact with the criminal justice system. By using both community-led initiatives and state-wide policy and legislative reform, Justice reinvestment strives to create safe and strong communities.

Incarceration is expensive: the annual cost per prisoner of providing corrective services in 2015–16 was \$103,295, and it has been estimated that the total

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<sup>18</sup> Brolan, C & Harley D 2018, [Indigenous Australians, Intellectual Disability and Incarceration: A Confluence of Rights Violations](#)

<sup>19</sup> ["I Needed Help, Instead I was Punished", Abuse and Neglect of Prisoners with Disabilities in Australia](#)

justice system costs of Aboriginal and Torres Strait Islander incarceration in 2016 were \$3.9 billion.<sup>20</sup>

Justice reinvestment provides a means for redirecting public money from imprisonment to strengthening individual and community capacity.

The New South Wales (NSW) Council of Social Service has called for ‘more investment in community-based and Aboriginal-led assistance, diversion, rehabilitation, and post-release programs’.<sup>21</sup> Furthermore, Just Reinvest NSW (JRNSW)<sup>22</sup> has asked for a more ‘joined up’ approach to support young people with disability, including FASD, to stop them falling into the youth and adult criminal justice system. JRNSW is currently exploring an initiative with law firm Gilbert + Tobin,<sup>23</sup> the Children’s Court and the Sydney Children’s Hospital Network 23 (SCHN) to explore options to refer young Aboriginal people going through the Youth Koori Court to CICADA (the Care and Intervention for Children and Adolescents affected by Drugs and Alcohol) at SCHN for FASD diagnosis, support and referrals to ongoing NDIS support.

For JRNSW to implement their outreach, they require support in funding Aboriginal workers to assist young people and their families to navigate the confusing justice and health systems.

## **Culture and Self – Determined Solutions**

For too long First Nation peoples have been treated as being infantile compared to non-Aboriginal Australia. A predictable yet preventable path: First Nation peoples with mental and cognitive disabilities in the criminal justice system. Australia should focus on implementing initiatives to reduce the over representation of Aboriginal and Torres Strait Islander Australians in the criminal justice system, whilst respecting their culture and heritage. Such initiatives

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<sup>20</sup> [Australian Law Reform Commission, Pathways to Justice into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples Report](#) (2018)

<sup>21</sup> [‘Incarceration rates of Aboriginal and Torres Strait Islander peoples’](#) (2017)

<sup>22</sup> [Submission to the Criminal Justice System Issues Paper](#)

<sup>23</sup> [When your disability doesn’t fit: eNding Discrimination against people with FASD in NSW Law and Policy](#) (2018)

should work on carving the pathway forward for an Aboriginal self-determined justice system. While the health system is shifting towards more culturally safe initiatives through regulations around health practitioners and health services, this must be coupled with broader service reforms such as ensuring provision of services on-country, facilitating traditional medicines and healing practices within mainstream services, and building community-controlled health and wellbeing services.<sup>24</sup>

The principle of self – determination is embedded in Article 1 of the International Covenant of Civil and Political Rights (ICCPR).<sup>25</sup> Australia’s government has historically implemented policies that have not recognized the needs of Aboriginal people. These policies were developed with little understanding of Aboriginal culture and their way of life. In many cases these policies acted to exclude First Nation peoples from many aspects of Australian life including regulation of residence, employment, marriage and social life.<sup>26</sup> As a result of these policies, First Nation peoples were often sent to live in designated areas, away from their country and families and were pressured to assimilate into the European way of life. Although some of these policies have been redesigned since 1970, more could be done to ensure that First Nation peoples, especially those who suffer from physical and mental disabilities are well – taken care of whilst respecting their culture.

The Commonwealth Senate Inquiry into the Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia in late 2015 resulted in 32 recommendations from the Senate's Community Affairs References Committee. A number of recommendations focused on the special circumstances of Aboriginal and Torres Strait Islander detainees with disability and the need for access to culturally appropriate therapeutic and support services which should not only be deployed by service providers, but also the police and the judiciary.<sup>27</sup> Issues arise when states and territories are under no legal obligation to implement these recommendations, but are able to choose for themselves

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<sup>24</sup> [Health care for people with cognitive disability](#) (2019)

<sup>25</sup> [International Covenant on Civil and Political Rights](#)

<sup>26</sup> [UNPO - Self-determination](#) (2017)

<sup>27</sup> [Report: Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia](#) (2016)

which recommendations will be implemented.<sup>28</sup> Australia must now move beyond recommendations and focus on the states and territories implementation of such services to invoke real change.

We submit that whilst policies have been reviewed, more can be done for First Nations peoples in light of their high incarcerations rates and the prejudice they receive. Australia's Government needs to take appropriate and urgent actions to protect the lives of Australians with disability, especially in the context of COVID-19.

First Nations persons with a disability should not have to live with the amplified impact of racism and ableism, creating a significant barrier in their enjoyment of their rights. Such rights violations only further contribute to the continuous cycle of injustice suffered by our First Nations people.

Thank you again for the opportunity to provide a submission to this important cause.

ANTAR offers our ongoing support to a process that meets the expectations of Aboriginal and Torres Strait Islander peoples and we would also welcome the opportunity to meet with the Review Team to discuss any of the points raised in this submission.

Sincerely

**Paul Wright**

National Director, ANTAR

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<sup>28</sup> Brolan, C & Harley D 2018, [Indigenous Australians, Intellectual Disability and Incarceration: A Confluence of Rights Violations](#)

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**With thanks:**

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**ANTAR is proud to acknowledge and pay our respects  
to First Nations Peoples as the traditional owners  
of the lands on which we work across the continent.**