



Aboriginal and Torres Strait Islander People with Disability in the Criminal Justice System

There is a lack of understanding, services and support for Aboriginal and Torres Strait Islander people with disabilities in the criminal justice system. This can lead to people becoming caught up with police, courts and in prison.

'Unfitness to plead' laws are supposed to protect people with disabilities in the criminal justice system. They are used when a court decides that a person cannot participate in criminal proceedings because of her or his disability. They can lead to good things, like a person being connected to disability services rather than prison. But they can lead to detention without an end date.

It's clear we need to change to law to prevent indefinite detention, but we also need to make sure the supports are available on the ground. Aboriginal and Torres Strait Islander people with disabilities who come into contact with the criminal justice system need to be connected to appropriate support. This is especially the case for young people with disabilities in contact with the criminal justice system.

In 2015-17, researchers collaborated with the **Victorian Aboriginal Legal Service** and the **North Australian Aboriginal Justice Agency** for the 'Unfitness to Plead Project'. The Project aimed to help develop supports for Aboriginal and Torres Strait Islander clients with cognitive and mental health disabilities. This brochure shares some of the findings and includes comments from Aboriginal and Torres Strait Islander researchers, professionals and activists involved with the project.



Issues

Legal Services Need Workers Who Understand Disability

Disability advocates can be co-located at Aboriginal and Torres Strait Islander legal services.

The first activity that needs to happen, or frankly should have happened yesterday, is there needs to be disability advocates co-located with Aboriginal legal services around the country actually, because the legal profession, the Aboriginal legal sector and the community legal sector is overwhelmed by the work they have to do from a legal perspective.

The researchers developed this kind of support program with active input and training from members of Deaf Indigenous Community Consultancy, First Peoples Disability Network, and other Aboriginal and Torres Strait Islander researchers and advocates. A 'Disability Justice Support Person' was co-located at the Victorian Aboriginal Legal Service and the North Australian Aboriginal Justice Agency.

The Unfitness to Plead Project tries to make sure Aboriginal and Torres Strait Islander people with disabilities not only have the right communication access and supports but the physical presence of an advocate and interpreter to assist their understanding of the justice system.

There Are High Levels of Stress, Loss, Grief and Trauma in Aboriginal Communities which Increase Likelihood of Disability

Aboriginal communities are greatly affected by loss, grief, trauma and economic disadvantage. This comes from generations of Aboriginal people experiencing racism, dispossession, forcible removal of children, poor education, overcrowded housing, a lack of appropriate health care, early loss of family and community members, over-policing, and high rates of incarceration. It has a big impact on the health and wellbeing of many Aboriginal people.

We have high rates of unresolved intergenerational trauma, which has led to disability, alcohol-related disability, brain injury and mental health issues.

Put it this way. When I first met [the support person] I was hidden underneath a table ... I was actually in a foetal position under the table and they got me out. That's how bad my anxiety was. When [the support person] came on the scene I've never gone back under a table.

We Need Better Supports for Aboriginal and Torres Strait Islander People with Disabilities in the Community

Aboriginal people with mental and cognitive disability who have been in prison can feel isolated and disconnected from family, often face discrimination and have no access to appropriate community-based supports. They are more likely to have early and regular contact with police.

We need better education and information for police, teachers, lawyers, magistrates, health, corrections, disability and community service providers regarding understanding and working with Aboriginal and Torres Strait Islander women and men with cognitive impairment and complex support needs.

We should be intervening as early as possible in a child's life to identify and address disabilities, and support their parents to care for their child as much as possible. It is a travesty that in 2016 we can have over representation in the criminal justice system because we haven't prevented or addressed early health, developmental vulnerabilities or intergenerational trauma in the first 2 years of life. We do not need prison solutions for health issues.

Culturally-Appropriate Support for Aboriginal and Torres Strait Islander People with Cognitive and Communication Disabilities

The interaction of people with cognitive and mental health disability and the justice system has been identified by the Australian Government as an issue of national concern, but the unique nature of disability and social circumstances affecting Aboriginal and Torres Strait Islander people requires a trauma-informed and rights-based approach to disability justice which is led by Aboriginal and Torres Strait Islander people.

The work is often overwhelming due to the complexities, not only of the legal system, but also those of culture, community and the disability itself. Effective communication skills are very different with Aboriginal people. There are various subtleties that will be often miscommunicated. The availability, the access, and the right to have information told to you is a human right.

Culturally-informed support that is designed and developed by Aboriginal and Torres Strait Islander people is required to make sure that the support is relevant and effective.

What Can Be Done?

1. *Self-Determination*

Aboriginal leaders, lawyers, workers, services and community members aspire to be self-determining in supporting the most disadvantaged people in their communities. The capacity in Aboriginal communities and legal services to support people with disabilities needs to be fostered, and Aboriginal-led knowledge and solutions appropriately supported and resourced.¹

2. *Accessible Justice*

The criminal justice system needs to be designed so it can be used by Aboriginal and Torres Strait Islander people with disabilities and all people with disabilities, so they can participate and get the support they need. The criminal justice system can be modified to be more accessible to persons with disabilities. Courts and lawyers can use plain language, interpreters and disability advocates can be provided, and space can be made to include elders and family members.

3. *Co-Locate Disability Support Workers in Aboriginal and Torres Strait Islander Legal Services*

Formal supports for Aboriginal and Torres Strait Islander people with disabilities (whether they are victims, accused persons, or in prison) would help them access the justice system on an equal basis with others. A formal support person can improve outcomes, including helping a person to communicate, secure their rights and get connected to relevant support in the community.

4. *Change Unfitness to Plead Laws*

Current unfitness to plead laws need to be changed to make sure Aboriginal and Torres Strait Islander people with disabilities can't be detained with no end in sight, or get 'lost in the system'. Laws in every State and Territory need to make sure that Aboriginal and Torres Strait Islander people with disabilities who are accused of a crime get the same opportunity as anyone else to challenge the case against them, but with the support they need to participate.

5. *Education*

Better education and information on Aboriginal and Torres Strait Islander people with disability, including mental health issues and complex needs, is needed for police, teachers, education support workers, lawyers, magistrates, health services, corrections, disability and community service providers, and so on.

¹ Eileen Baldry, Ruth McCausland, Leanne Dowse and Elizabeth McEntyre, *A Predictable and Preventable Path: Aboriginal People with Mental and Cognitive Disabilities in the Criminal Justice System* (University of New South Wales, 2015).