



3 October 2022

The Secretariat  
United Nations Committee Against Torture

**Re: NGO Submission on Australia's 7<sup>th</sup> Periodic Report**

The First Peoples Disability Network wishes to thank the Committee for the opportunity to provide a submission to the Committee Against Torture regarding Australia's 7<sup>th</sup> Periodic Report at the 75<sup>th</sup> Session in November 2022.

The First Peoples Disability Network (Australia) is the national peak organisation of and for Australia's First Peoples with disability, their families and communities. We actively engage with communities around Australia and represents Aboriginal and Torres Strait Islander people with disability in Australia and internationally. Our goal is to influence public policy within a human rights framework established by the *United Nations Convention on the Rights of Persons with Disability* and the *United Nations Declaration on the Rights of Indigenous Peoples*. Consistent with our principle of community control, our organisation is governed by First Peoples with lived experience of disability.

FPDN believes the human rights violations experienced by First Nations people with disability under the UNCAT requires a dedicated focus in which to be examined by the Committee. In the vast majority of public discourse, from government policy to social media, journalism and activism, and even the United Nations fora, First nations people are consistently relegated to the fringes. Mirroring the social reality, our people appear only as footnotes that address but one half of their reality at a time – either as a First Nations person or someone with a disability. As Dr Scott Avery states:

*An Aboriginal or Torres Strait Islander person with disability is a member of two communities; one pertaining to their identity as an Indigenous person and another pertaining to their disability. Addressing one aspect of a person's rights in isolation from the composite rights can leave them excluded from another aspect of society important to their sense of identity<sup>1</sup>.*

It is critical that the rights of First Nations people with disability are addressed with clear and intentional focus in order to do achieve some justice for those who have been denied their rights for too long.

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<sup>1</sup> First Peoples Disability Consortium, 2016, Aboriginal and Torres Strait Islander perspectives on the recurrent and indefinite detention of people with cognitive and psychiatric impairment: A Submission to the Senate Inquiry on the Indefinite Detention of People with Cognitive and Psychiatric Impairment.

We write to the Committee to provide an overview of the issues requiring such focus and seek a meeting with the Committee to provide further details of the issues presented herein.

This letter will briefly discuss the following five issues of particular concern including:

1. Indefinite Detention
2. Youth Detention
3. Solitary Confinement
4. Restrictive Practices
5. Gender based violence Against First Nations Women and Girls with Disabilities
6. Forced Living Arrangements as 'Secondary' Sites of Detention

## Context

Disability is more common among First Nations peoples than the non-Indigenous population, at 38% of First Nations people over the age of 18 and 22% of First Nations children<sup>2</sup> compared with 18% of adults and 8% children in the non-Indigenous population<sup>3</sup>. Unfortunately, First Nations people with disability are amongst the most marginalised in Australia, experiencing double discrimination at the intersection of ableism and racism, often rendering them invisible and unheard.

The First Peoples Disability Justice Consortium in 2016 highlighted that: *“unjust deprivation of liberty, poor health care and poor support intensify the marginalisation of Aboriginal and Torres Strait Islander people and result in serious cases of human rights abuses. The historical exclusion of Aboriginal and Torres Strait Islander people with disability from society has meant this issue has been kept from the public eye.”*<sup>4</sup> This double disadvantage often interacts with the consequences of ongoing colonial violence, including poverty<sup>5</sup> and trauma, alongside broader system failures including a lack of appropriate health care and inclusive and culturally appropriate education, insecure and inaccessible housing, and punitive welfare policies. First Nations people with disability are significantly overrepresented on a population group basis amongst homeless people, in the criminal and juvenile justice systems,<sup>6</sup> and in the care and protection system (both as parents and children)<sup>7</sup>.

<sup>2</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, <https://disability.royalcommission.gov.au/system/files/2020-11/First%20Nations%20people%20with%20disability%20-%20Infographic.pdf>, p1.

<sup>3</sup> As above, p2.

<sup>4</sup> First Peoples Disability Consortium, 2016, Aboriginal and Torres Strait Islander perspectives on the recurrent and indefinite detention of people with cognitive and psychiatric impairment: A Submission to the Senate Inquiry on the Indefinite Detention of People with Cognitive and Psychiatric Impairment.

<sup>5</sup> Research has also shown the increased financial stress on carers within First Nations families <https://bmcfampract.biomedcentral.com/articles/10.1186/s12875-017-0668-3>.

<sup>6</sup> First Nations people are 11 times more likely to be imprisoned than other Australians. Source: *Overcoming Indigenous Disadvantage Key Indicators 2005; Steering Committee for the Review of Government Service Provision*.

<sup>7</sup> *Overcoming Indigenous Disadvantage Key Indicators 2005; Steering Committee for the Review of Government Service Provision*, p9.5 states ‘The rate of children on care and protection orders (for a combination of all states and territories except NSW) was five times higher for First Nations children (20 per 1000 children in the population aged 0 – 17 years) than for non-Indigenous children (4 per 1000 children).

## 1. Indefinite Detention

A key driver of incarceration of First Nations people with disability is the indefinite detention of people with a cognitive impairment who are deemed unfit to plea. Whilst this situation is not unique to Indigenous people, they are disproportionately more affected.

By its very nature, the indefinite detention of First Nations people with disability in prisons or other sites of detention, such as youth detention centres, is cruel, arbitrary, unnecessary, and causes extreme harm.

Despite this, the criminal justice system in Australia continues to be inappropriately used as a default care provider for First Nations people with disability, who have been forced into the criminal justice system early in life in the absence of alternative pathways. Pathways into and around the criminal justice system for many First Nations people with disability, especially those with psychosocial disability and cognitive impairment, are embedded and entrenched by the absence of coherent frameworks for holistic disability, education, housing and human services support<sup>8</sup>.

Once in contact with the criminal justice system, First Nations people with psychosocial disability and cognitive impairment experience ongoing criminalisation and punishment across their lifespan. With both state and territory justice systems and the federal Australian government doing little to address unmet disability needs and the personal, social and systemic circumstances having initially led to detention, First Nations people with psychosocial disability and cognitive impairment are propelled into a cycle of recurrent detention that goes on indefinitely.<sup>9</sup>

The indefinite detention of First Nations people with psychosocial disability and cognitive impairment needs to be understood as the result of the failure of multiple systems, including the justice, housing, health and education systems. Too often, the needs of First Nations people with disability are labelled as ‘too complex,’ and in the absence of both culturally appropriate and accessible supports, detention becomes the default response. What must be understood, however, is that ‘complexity’ is a “product of the compounding of individual life situations and the lack of capacity of support structures to respond appropriately over time; that is, they are creations of social systems and organisation, not the fault of an individual person.”<sup>10</sup>

For example, FPDN advocates continue to report of First Nations people with disability who, because supported accommodation appropriate to their needs has not been made available, have instead been locked away in a system they should have been diverted from.<sup>11</sup> Similar scenarios continue to play out across the country, especially in rural and remote communities. More recently, FPDN is aware of the case of a young woman with FASD who was held in detention for 18 months without conviction, and another in which an Aboriginal man with mental impairment who was in detention for 10 years without conviction nor imminent prospect of trial.

<sup>8</sup> Aboriginal and Torres Strait Islander Perspectives on the recurrent and indefinite detention of people with cognitive and psychiatric impairment, *First Peoples Disability Justice Consortium*, [https://fpdn.org.au/wp-content/uploads/2016/09/Senate-Inquiry-Indefinite-Detention-Submission\\_Final.pdf](https://fpdn.org.au/wp-content/uploads/2016/09/Senate-Inquiry-Indefinite-Detention-Submission_Final.pdf).

<sup>9</sup> Ibid, p5

<sup>10</sup> As above, p21.

<sup>11</sup>

[https://library.vla.vic.gov.au/firstvlaRMSPublic/docs/Corporate/VLA%20Submissions/NDIS%20Joint%20Standing%20Committee%20\(June%202021\).pdf](https://library.vla.vic.gov.au/firstvlaRMSPublic/docs/Corporate/VLA%20Submissions/NDIS%20Joint%20Standing%20Committee%20(June%202021).pdf)

As the number of people held on remand increases, the court system becomes ill-equipped to process such cases quickly and efficiently, and these people end up in a legal 'no-mans land'. In certain jurisdictions, a person with mental impairment faces the prospect of being in detention substantially longer because they are unfit to plea than the term of their sentence if they were convicted of the crime. This creates a perverse incentive to plead guilty regardless of their culpability, which in practical effect criminalises disability.

The Australian Commonwealth continues to 'wash its hands' of the significant human rights violations, violence, abuse and neglect that is inherent to the indefinite detention of First Nations people with disability in prisons and other facilities. In continuing to do so, Australia continues to violate Article 16 (Cruel, Inhuman or Degrading Treatment or Punishment) of the Convention Against Torture (CAT), and in many instances, Article 1 (Torture) due to the vulnerability of the person involved (for example, age, Indigeneity, disability), the environment in which it takes place, and the cumulative effect of various factors including the prolonged duration of the experience.<sup>12</sup>

#### **Case Study:**

Mr N. is an Aboriginal man with intellectual disability. He spent ten years in a Western Australian prison without ever being found guilty of a crime. Mr N. was charged with sexually assaulting two girls in 2001, but has never faced trial after he was deemed 'unfit to plead'. His lawyer estimates that if he had been convicted he would have only served about five years in prison. There appears to be no evidence that the crimes he was charged with ever actually occurred. He was released in January 2012 under stringent conditions that limit his ability to lead a normal life in the community, despite never being convicted of the crime he was charged with<sup>13</sup>.

## **2. Youth Detention**

As the Committee is aware, First Nations people with disabilities are increasingly being 'managed' by police, courts and corrections, rather than being supported in the community. Trajectories into detention for First Nations people with disability are occurring from a very young age, with a severe and widespread lack of appropriate early diagnosis and positive, culturally responsive support for First Nations children and young people entrenching this matriculation pathway into prison.<sup>14</sup>

The lack of support for First Nations children and young people with disabilities is inextricably connected to schools and police viewing certain kinds of behaviour through a prism of institutional racism, rather than disability. In *Culture is Inclusion*, FPDN's landmark publication on the experiences of Aboriginal and Torres Strait Islander people with disability, author Dr Scott Avery identifies this pattern as what is colloquially referred to as 'bad black kid syndrome'.<sup>15</sup> Rather than having their learning needs assessed, many First Nations children

<sup>12</sup> General Comment Number 2, Interpretation of Article 2 of the Convention Against Torture, p6.

<sup>13</sup> Michael Brull, 'The sad story of Marlon Noble' on ABC Ramp Up, Ramp Up (9 December 2011) <[www.abc.net.au/rampup/articles/2011/12/09/3387845.htm](http://www.abc.net.au/rampup/articles/2011/12/09/3387845.htm)>.

<sup>14</sup> Aboriginal and Torres Strait Islander Perspectives on the recurrent and indefinite detention of people with cognitive and psychiatric impairment, *First Peoples Disability Justice Consortium*, [https://fpdn.org.au/wp-content/uploads/2016/09/Senate-Inquiry-Indefinite-Detention-Submission\\_Final.pdf](https://fpdn.org.au/wp-content/uploads/2016/09/Senate-Inquiry-Indefinite-Detention-Submission_Final.pdf), p11.

<sup>15</sup> Avery, S., *Culture is inclusion: A narrative of Aboriginal and Torres Strait Islander people with disability*, (2018) First Peoples Disability Network (Australia), Sydney.

may have disabilities that are undiagnosed or supported, subsequently facing a punitive approach in their education that results in life-long stigmatisation.<sup>16</sup>

The inability to access an inclusive education is carried through to employment prospects, with this combination of unfulfilled educational and employment prospects placing young First Nations people with disabilities in a situation in which they are more likely to come in contact with the police and, in turn, enter the prison system.<sup>17</sup> Compounded by institutional racism and ableism within the legal system that regularly sees First Nations children with disability removed from their families and placed into out of home care (another key driver of adult incarceration), the bleak reality of who ends up in youth detention can be seen.<sup>18</sup>

In 2016, following evidence of torture including the tear-gassing of six boys being held in isolation in Don Dale youth detention centre, the *Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory* was established. The Commission found that it was young First Nations children with disabilities being criminalised, with 100 per cent of children detained in the NT being Aboriginal (a proportion that has not changed since), many having FASD or cognitive impairment, and up to 90 per cent having some level of hearing impairment.<sup>19</sup> In its concluding remarks, the Commission asserted that youth detention centres used in the NT were not fit for accommodating children and young people, let alone those with disabilities, with serious human rights abuses frequently occurring.<sup>20</sup>

Despite the Commission's final recommendations, including that Don Dale be closed down and that the age of criminal responsibility be raised from just ten years old, First Nations children with disability continue to be detained in Don Dale and other youth detention centres across the country; Australia again failing to act on these egregious human rights violations.

### Case Study:

In 2021, the *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* heard evidence of a Northern Territory First Nations teenager with disability "who had been intermittently imprisoned in the Don Dale youth detention centre since the age of 10."<sup>21</sup>

The young man, who gave evidence under the pseudonym IL, said as an eight-year-old, "he was bashed by his carers, had suicidal thoughts and became homeless."<sup>22</sup> He

<sup>16</sup> Avery, S., "Aboriginal and Torres Strait Islander people with disability: Falling through the cracks" [2020] PrecedentAULA 42; (2020) 159 Precedent 12.

<sup>17</sup> As above.

<sup>18</sup> As above.

<sup>19</sup> 'Royal commission told foetal alcohol disorder and hearing loss contributing to incarceration', The Guardian (2016), <https://www.theguardian.com/australia-news/2016/oct/13/royal-commission-told-foetal-alcohol-disorder-and-hearing-loss-contributing-to-incarceration>.

<sup>20</sup> Report Overview, Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, <https://www.royalcommission.gov.au/system/files/2020-09/report-overview.pdf>, p5.

<sup>21</sup> Disabled boy detained from age 10, 7News (2021), <https://7news.com.au/politics/law-and-order/disability-inquiry-on-indigenous-children-c-3988607>.

<sup>22</sup> Disability royal commission hears from First Nations children caught in the system, ABC News (2021), <https://www.abc.net.au/news/2021-09-25/disability-royal-commission-first-nations-children/100488980>.

said he'd been *"placed in 20 Darwin foster homes in his life but had never had an Aboriginal carer or caseworker."*<sup>23</sup>

IL has been in Don Dale multiple times, including once for two years, which left him *"institutionalised."*<sup>24</sup>

### 3. Solitary Confinement

The use of solitary confinement, a practice also referenced to by different state and territory governments as 'seclusion', 'segregation', 'separation', and 'isolation', is one form of restrictive practice commonly used by the criminal justice system to manage First Peoples with disability and separate them from the general prison population. First Peoples with a psychosocial or cognitive disability can spend weeks, months or even years locked in solitary confinement in detention, or crisis or safety units, for 22 hours or more a day.<sup>25</sup>

For decades, countless inquiries have strongly recommended against the use of solitary confinement for First Nations people with disability, including the 1991 *Royal Commission into Aboriginal Deaths in Custody* (RCIADIC) which found that solitary confinement causes "extreme anxiety" and has a particularly detrimental impact on First Nations people, many of whom are already separated from their family and community.<sup>26</sup>

Human Rights Watch has documented many cases of First Nations people with psychosocial disability or cognitive impairment whose disabilities have deteriorated as a result of spending time in solitary confinement.<sup>27</sup> Likewise, it is not uncommon for First Nations people with disability to leave solitary confinement with new and ongoing psychosocial disabilities, such as Complex Post-Traumatic Stress Disorder (C-PTSD), as a result of this cruel practice. As Human Rights Watch found, "the longer the duration of solitary confinement or the greater the uncertainty regarding the length of time, the greater the risk of serious and irreparable harm to the inmate that may constitute cruel, inhuman or degrading treatment or punishment or even torture."<sup>28</sup>

In 2013 the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment declared, in no uncertain terms:

*It is essential that an absolute ban on all coercive and non-consensual measures, including restraint and solitary confinement of people with psychological or*

<sup>23</sup> Disabled boy detained from age 10, 7News (2021), <https://7news.com.au/politics/law-and-order/disability-inquiry-on-indigenous-children-c-3988607>.

<sup>24</sup> Disability royal commission hears from First Nations children caught in the system, ABC News (2021), <https://www.abc.net.au/news/2021-09-25/disability-royal-commission-first-nations-children/100488980>.

<sup>25</sup> "I Needed Help, Instead I Was Punished" Abuse and Neglect of Prisoners with Disabilities in Australia, Human Rights Watch (2018), [https://www.hrw.org/sites/default/files/report\\_pdf/australia0218\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/australia0218_web.pdf), p5.

<sup>26</sup> Australia: Deaths of Prisoners with Disabilities, Human Rights Watch (2020), <https://www.hrw.org/news/2020/09/15/australia-deaths-prisoners-disabilities>.

<sup>27</sup> "I Needed Help, Instead I Was Punished" Abuse and Neglect of Prisoners with Disabilities in Australia, Human Rights Watch (2018), [https://www.hrw.org/sites/default/files/report\\_pdf/australia0218\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/australia0218_web.pdf), p5.

<sup>28</sup> "I Needed Help, Instead I Was Punished" Abuse and Neglect of Prisoners with Disabilities in Australia, Human Rights Watch (2018), [https://www.hrw.org/sites/default/files/report\\_pdf/australia0218\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/australia0218_web.pdf), p41.



*intellectual disabilities, should apply in all places of deprivation of liberty, including in psychiatric and social care institutions.*<sup>29</sup>

In spite of this definitive assertion, the use of solitary confinement in Australia remains not only common, but normalised, with many reporting an increase in its use in the context of the COVID-19 pandemic.<sup>30</sup> First Nations people with psychosocial or cognitive disabilities remain disproportionately represented in all solitary confinement regimes (maximum security units, detention or punishment units, and crisis, observation, or safe units) across Australia, with the practice used to control people with disabilities in the absence of appropriate disability supports and mental health treatment.

#### **Case Study:**

Less than three weeks ago, on 12 September 2022, the *Townsville Bulletin* reported of a young First Nations man who was “*left bleeding for more than 40 minutes when he tried to take his own life in a North Queensland jail cell.*”<sup>31</sup>

Although this young man was known to have a serious psychosocial disability, including a history of suicide attempts, he was often moved between prisons and held under solitary confinement. CCTV and body cam footage recorded in a cell under 24-hour observation inside the Lotus Glen prison in Far North Queensland showing “*he suffered significant blood loss but was not taken to hospital*” after trying to take his own life.<sup>32</sup>

In another incident just a few months later, CCTV showed “*multiple guards and other staff walking past the prisoner’s cell as blood leaks under the door and pools in the hallway outside.*”<sup>33</sup>

## **4. Restrictive Practices**

Beyond solitary confinement, First Nations people with disabilities continue to be subjected to a wide range of restrictive practices, all of which constitute human rights abuses. Restrictive practices include any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability. These include seclusion, chemical restraint, mechanical restraint, physical restraint and environmental restraint.<sup>34</sup>

Varying levels of regulation exist, depending on the context in which restrictive practices are used. For example, unlike the disability sector, where restrictive practices are regulated by legislation with reference to *some* (but not all) of Australia’s international human rights

<sup>29</sup> Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Méndez, UN HRC 22nd sess, UN Doc A/HRC/22/53 (1 February 2013), p15.

<sup>30</sup> *People in prison still in COVID-19 Lockdown*, Lindsay Pearce, the University of Melbourne (2022), <https://pursuit.unimelb.edu.au/articles/people-in-prison-still-in-covid-19-lockdown>.

<sup>31</sup> ‘*You’ve probably made a big enough mess’: Suicidal inmate left to bleed*, *Townsville Bulletin* (2022), <https://www.townsvillebulletin.com.au/news/townsville/young-man-left-bleeding-after-suicide-attempt-in-lotus-glen-prison-in-far-north-queensland/news-story/7f96f4c54fabd5889a715670ee569693>.

<sup>32</sup> As above.

<sup>33</sup> As above.

<sup>34</sup> *Regulated Restrictive Practices Guide*, National Disability Insurance Scheme (NDIS), <https://www.ndiscommission.gov.au/sites/default/files/2022-02/regulated-restrictive-practice-guide-rrp-20200.pdf>, p4.

obligations, the criminal justice system's use of restrictive practices is not subject to the same protections, safeguards and reporting requirements.<sup>35</sup>

This enables state and territory criminal justice systems to use restrictive practices, such as physical restraints including spit hoods, punitively, amounting to cruel, inhuman, or degrading treatment.<sup>36</sup> Of particularly grave concern is the continued use of restrictive practices on First Nations children with disabilities within youth detention. Recent reports continue to reveal the use of restrictive practices such as spit hoods and mechanical restraint chairs on children across states including the ACT, Queensland and the NT.<sup>37</sup>

Beyond the criminal justice system, the use of restrictive practices is well established within disability, residential aged care, mental health and physical health care settings, similarly amounting to torture and ill treatment. In response to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (DRC)'s *Restrictive Practices Issues Paper*, advocates indicated that First Nations people with disability are disproportionately affected by restrictive practices.<sup>38</sup> Suggested reasons behind this ranged from institutional racism to the overrepresentation of First Nations people in admissions to mental health services and psychiatric intensive care units.<sup>39</sup>

Importantly, the way in which restrictive practices have been used as a tool of colonial violence and genocide must be recognised. Throughout Australia's history, the specific cultural and spiritual needs of First Nations people have been the subject of restrictive practices, including limiting engagement in traditional ceremonies, disallowing specific foods of cultural significance, or limiting engagement with other members of a particular cultural identity or spiritual belief.<sup>40</sup>

Chemical restraint in the form of forced sterilisation is another restrictive practice that, in the context of settler-colonial Australia, has been used as an ongoing weapon of genocide against First Nations women and those with uteruses, upholding racially violent ideas around eugenics. Today, First Nations people with disability, especially First Nations women, continue to be subjected to forced sterilisation, with this clear and documented violation of the right to be free from torture continuing not only unabated, but legally sanctioned by consecutive Australian Governments.<sup>41</sup>

<sup>35</sup> *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*, Senate Standing Committees on Community Affairs (2015), [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Violence\\_abuse\\_neglect/Report/c04](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report/c04).

<sup>36</sup> *Factsheet: Indefinite Detention of Persons with Disability Within the Criminal Justice System*, Disabled People's Organisations Australia (DPOA) (2018), <https://dpoa.org.au/factsheet-indefinite-detention/>.

<sup>37</sup> *Australian spit hood ban petition as NT police reveal use on kids*, NT News (2022), <https://www.ntnews.com.au/news/politics/national-calls-to-ban-spit-hoods-after-nt-police-reveal-continued-use-against-kids/news-story/4a4bd8481fee0d7b9e7d482fd1486402>.

<sup>38</sup> *Overview of responses to the Restrictive Practices Issues Paper*, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, <https://disability.royalcommission.gov.au/system/files/2022-03/Overview%20of%20responses%20to%20the%20Restrictive%20practices%20Issues%20paper.pdf>, p6.

<sup>39</sup> As above.

<sup>40</sup> As above.

<sup>41</sup> Méndez, Juan. E. (2013) UN.Doc A/HRC/22/53, Op Cit., Nowak, M. (2008) *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*; UN General Assembly, UN Doc. A/HRC/7/3; Committee on the Rights of the Child (2011) General Comment No. 13: Article 19: The right of the child to freedom from all forms of violence; UN Doc. CRC/C/GC/13.



The recently published revised Istanbul Protocol provides guidance on investigation and documentation of torture and ill-treatment. These sources of guidance assist to understand use of restrictive practices in a general sense, with a particular focus on their use in traditional sites of detention (that is, in police custody and prisons).

Further, in its guidelines on Article 14 of the Convention on the Rights of Persons with Disabilities (CRPD), the CRPD Committee has clarified that:

*The Committee has called upon States parties to protect the security and personal integrity of persons with disabilities who are deprived of their liberty, including by eliminating the use of forced treatment, seclusion and various methods of restraint in medical facilities, including physical, chemical and mechanical restraints. The Committee has found that those practices are not consistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment of persons with disabilities, pursuant to article 15 of the Convention.*<sup>42</sup>

#### **Case Study:**

In July 2022, it was revealed in the *Victorian Mental Illness Awareness Council third Seclusion Report* that First Nations Victorians are being restrained and secluded at a higher rate than the general population.<sup>43</sup>

The rate of restraint amongst First Nations patients sat at 4.6 per cent, despite First Nations people making up just 3.5 per cent of the total people admitted to mental health settings.<sup>44</sup>

These findings come only one year after the 2021 *Royal Commission into Victoria's Mental Health System*, which highlighted the lack of cultural safety for First Nations people with disability in mental health services and settings.<sup>45</sup>

## **5. Gender-Based Violence Against First Nations Women and Girls with Disabilities**

First Nations women, children and gender diverse people continue to experience alarming rates of gender-based violence within Australia. As delegates highlighted at the 2022 *Wiyi Yani U Thangani First Nations Women's Safety Policy Forum*, including those from First Peoples Disability Network (FPDN), First Nations women are 32 times more likely to be hospitalised and 11 times more likely to die from assault than non-Indigenous women in Australia. Family violence is a significant contributing factor to the incarceration of First Nations women and the over-representation of First Nations children in child protection systems, and is the leading reason for their removal from our families.<sup>46</sup>

<sup>42</sup> *Guidelines on Article 14 of the Convention on the Rights of Persons with Disabilities: The Right to Liberty and Security of Persons with Disabilities*, UN General Assembly, 72nd sess, UN Doc A/72/55 (2017), p18.

<sup>43</sup> *Restraint, seclusion of Indigenous mental health patients in Victoria laid bare in damning report*, National Indigenous Times (2022), <https://www.nit.com.au/restraint-seclusion-of-indigenous-mental-health-patients-in-victoria-laid-bare-in-damning-report/>.

<sup>44</sup> As above.

<sup>45</sup> As above.

<sup>46</sup> 2022 Wiyi Yani U Thangani First Nations Women's Safety Policy Forum Delegate Statement, <https://humanrights.gov.au/2022-wiyi-yani-u-thangani-first-nations-womens-safety-policy-forum-delegate-statement>.

We recognise that gender-based violence is not a part of our First Nations cultures, but rather continues as a result of ongoing colonial violence, systemic exclusion, inequalities and all intersecting discriminations, including racism, sexism and ableism. Acknowledging that First Nations women and gender diverse people with disabilities face many of these intersecting forms of discrimination, one can understand why Aboriginal and Torres Strait Islander women with disability are likely to experience rates of violence that are higher than other women with disability, as well as other First Nations women without disabilities.<sup>47</sup>

The gender-based violence First Nations women and gender diverse people with disabilities experience must be understood not only as a form of interpersonal violence, but as a form of structural violence that is pervasive within settings like prisons. For First Nations women with disabilities in detention - including Sistergirls held in men's prisons - facing sexual, physical, and verbal violence in prison, including practices like forced strip searches, perpetuates the cycle of violence. Experiences of gender-based violence within institutions like prisons frequently leads to re-traumatisation, particularly when many of these women and gender diverse people have already experienced "multiple forms of trauma, including family violence, rape, sexual assault, gender-based and/or racialised violence."<sup>48</sup>

- Lack of services specifically for First Nations Women With Disabilities; service may be culturally safe but not accessible, or accessible but not culturally safe etc.
- Can refer to changing the landscape?  
<https://www.ourwatch.org.au/resource/changing-the-landscape-summary/>

## 6. Forced Living Arrangements as 'Secondary' Sites of Detention

First Nations people with disability continue to experience the most severe impacts of the broader housing crisis within both Aboriginal and Torres Strait Islander communities and the disability sector, often resulting in the forced institutionalisation of First Nations people with disability in congregate settings like disability group homes and residential aged care (RAC). Under Article 19 of the CRPD, people with disability have a right to live in the house they choose, with the people they choose, yet despite this human right of people with disability to choose where and with whom they live, accessible and appropriate housing remains limited for First Nations people with disability.<sup>49</sup>

The segregation and forced living arrangements of First Nations people with disability in 'secondary' sites of detention such as group homes can heighten the likelihood of violence, including the likelihood of being subjected to restrictive practices.<sup>50</sup> Due to the worrying lack

<sup>47</sup> Phillips, J. and Vandenbroek, P. *Domestic, Family and Sexual Violence in Australia: an overview of the issues*. Parliamentary Library of Australia. Available: [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1415/ViolenceAust](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1415/ViolenceAust).

<sup>48</sup> Aboriginal and Torres Strait Islander Perspectives on the recurrent and indefinite detention of people with cognitive and psychiatric impairment, *First Peoples Disability Justice Consortium*, [https://fpdn.org.au/wp-content/uploads/2016/09/Senate-Inquiry-Indefinite-Detention-Submission\\_Final.pdf](https://fpdn.org.au/wp-content/uploads/2016/09/Senate-Inquiry-Indefinite-Detention-Submission_Final.pdf), p5.

<sup>49</sup> *We have a right to choose homes without violence: Submission responding to the Disability Royal Commission's Violence and Abuse of People with Disability at Home Issues Paper*, People with Disability Australia (PWDA) (2021), <https://pwd.org.au/wp-content/uploads/2021/03/We-have-a-right-to-choose-homes-without-violence.pdf>, p2.

<sup>50</sup> As above.

of oversight in segregated settings like group homes,<sup>51</sup> as well as the provision of support services being tied to these homes, First Nations people with disability living in these institutions face significant barriers to reporting violence and seeking justice.

It is for this very reason disability representative organisations (DRO's) across Australia have urged the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), in relation to its upcoming visit to Australia to inspect 'secondary' places of detention, pursuant to Article 11(1)(a) of the *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT).<sup>52</sup>

The pervasive abuse in these settings is only further compounded by the culturally specific impacts of group home models on the wellbeing of First Peoples with disability and their families. For example, the physical location of most accommodation services is typically a long distance from First Nations communities, especially rural and remote communities with family members and kinship networks regularly raising concerns that these distances prevent them from regular contact with the First Nations person with disability that uses the service.

First Nations people with disability themselves consistently express fear that living in government owned or run accommodation, away from their family and Country, is akin to the historical removal of First Nation people from their communities and homelands.<sup>53</sup>

### Case Study:

During the Disability Royal Commission's recent Public Hearing 25, examining '*The operation of the National Disability Insurance Scheme (NDIS) for First Nations people with disability in remote and very remote communities*', representatives from the NPY Women's Council voiced community frustration from within Anangu Pitjantjatjara Yankunytjatjara (APY) Lands about forced living arrangements.<sup>54</sup>

NPY representatives shared that many community members with disability and complex needs were being forced to move far from their homelands to places like Alice Springs.

Highlighting the impact of being separated from community and Country, the Commission was told that there is of no funding in First Nations people with disabilities' NDIS plans to "*take part in funerals and cultural business and other really important things that they need to do back home on Country,*" resulting in a great deal

<sup>51</sup> *Report on Public Hearing 3: The Experience of Living in a Group Home for People with Disability*, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2019), <https://disability.royalcommission.gov.au/public-hearings/public-hearing-3>.

<sup>52</sup> *No time to lose for OPCAT inspection of disability settings*, People with Disability Australia (PWDA) (2022), <https://pwd.org.au/no-time-to-lose-for-opcat-inspection-of-disability-settings/>, p1.

<sup>53</sup> *Telling It Like It Is Report*, Aboriginal Disability Network (2007), <https://fpdn.org.au/wp-content/uploads/2016/04/tellingitlikeitis.pdf>, p17.

<sup>54</sup> *Public hearing 25 - The operation of the NDIS for First Nations people with disability in remote and very remote communities, Alice Springs - Day 2 video transcript*, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2022), <https://disability.royalcommission.gov.au/publications/public-hearing-25-operation-ndis-first-nations-people-disability-remote-and-very-remote-communities-alice-springs-day-2>.

of sadness and, for many, what could be described as psychological torture.<sup>55</sup>

## Final Comments

A dedicated focus on the human rights violations experienced First Nations people with disability is warranted and necessary by both the Committee and all Australian Governments.

FPDN is encouraged by recent commitments by Australian governments to build the First Nations disability sector under the Closing the Gap Agreement, and significant funding to FPDN to support this critical work. We are also optimistic about advocacy efforts aimed at securing agreement to develop a First Nations Action Plan under the newly released national Disability Strategy (Australia's Disability Strategy 2021-2031).

However, it is imperative that we maintain efforts to change the systems, laws and policies that allow these gross violations of human rights. There is no excuse for inflicting such cruel and inhumane treatment on First Nations people with disability for no better reason than apathy or a reluctance to shift colonial mindsets within governments that refuse to be held accountable for their actions.

FPDN looks forward to meeting with the Committee to further discuss how we can move forward on these issues.

Please don't hesitate to contact Tennille Lamb, National Policy Director by email at [tennillel@fpdn.org.au](mailto:tennillel@fpdn.org.au) if you wish to discuss this submission.

Yours faithfully



Mr Damian Griffis  
Chief Executive Officer

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<sup>55</sup> As above.