

Justice

The evidence base for this paper draws on the work of the National Disability Footprint, including the Data and Research Footprint (Element 2) delivered in partnership with Dr Scott Avery and Girra Maa Indigenous Health, University of Technology Sydney.

The justice system is failing First Nations people with disability. Harms occur where racism, ableism and the ongoing impacts of colonisation intersect. They are preventable when support replaces punishment. In June 2025, more than one in three people in custody were First Nations. Imprisonment of our people remains extremely high and has risen over the past year (ABS 2025).

In youth justice the pattern is starker. In 2023–24, First Nations young people were almost two in three of those in detention and more than half of those under community supervision. These figures show deep systems failure in early help, schooling, care and housing, not individual deficit (AIHW 2025a).

Disability is common, often unidentified and poorly supported. In Western Australia's youth detention, 36% of assessed young people had Fetal Alcohol Spectrum Disorder (FASD) and 89% had severe neurodevelopmental impairment, which affects memory, impulse control and learning (Bower et al. 2018). Notably, 34 of the 36 young people who were assessed as having FASD were First Nations children (Bower et al. 2018). In adult prisons, 43% of First Nations entrants reported a diagnosed mental health condition in 2022, with higher rates for women (AIHW 2023a).

What works is clear and achievable. Raise the minimum age of criminal responsibility to at least 14 years. Embed culturally safe disability screening, communication support and early help at police stations, during custody, and in court such as funding culturally safe disability advocacy and collecting data on First Nations people with disability in the justice system. Fund Aboriginal Community Control Organisation-led diversion, healing and throughcare. Ensure National Disability Insurance Scheme (NDIS) continuity and foundational supports in and out of custody. Reform punitive laws. Strengthen independent oversight.



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Key Messages

- **A national human rights crisis:** the extreme over-representation and neglect of First Nations people with disability in justice systems demands urgent, coordinated action.
- **Disability is criminalised, not supported:** unmet disability needs, including FASD, cognitive and psychosocial disability and hearing loss, are misread as offending, leading to police and court escalation.
- **Intersectionality matters:** systemic racism and ableism compound disadvantage; policy must be evidence-informed and strengths-based.
- **Prevention and diversion first:** invest in early identification, culturally safe, disability-informed supports and community-led diversion, including justice reinvestment.
- **Self-determination leads:** design, delivery and accountability must rest with First Nations communities and representative organisations.
- **Implement existing roadmaps:** fully implement and fund Royal Commission into Aboriginal Deaths in Custody, Australian Law Reform Commission Pathways to Justice, Disability Royal Commission and Closing the Gap commitments, with transparent monitoring.

Critical Justice Issues

- **Criminalisation of disability:** unmet needs (e.g., FASD, cognitive impairment, psychosocial disability, hearing loss) are misinterpreted as offending, escalating police and court contact.
- **Indefinite detention / “impaired accused”:** in some jurisdictions, people found unfit to plead or not guilty by reason of mental impairment can be detained for years without conviction (ALRC, 2018). South Australia, ACT, and the Commonwealth now require courts to set a limiting term for these orders.
- **Use of custody as de-facto “care” for those labelled “high risk”**, especially where services are absent (DRC; NDIS Review).
- **Restrictive practices and unsafe conditions in detention** such as extended periods of isolations, hanging points in cells, and children being held in adult watchhouses (RCIADIC, 1991).
- **Deaths in custody and failures to implement Optional Protocol to the Convention Against Torture (OPCAT)**, with incomplete independent inspection coverage (OHCHR, 2025).
- **NDIS and justice interface failures:** delayed access, plan pauses, and failed markets disrupt supports pre-custody, as well as during and post-custody (DRC; NDIS Review).

Human Rights Foundations

- **Convention on the Rights of People with Disabilities (CRPD) Article 13** requires age-appropriate and procedural accommodations so people with disability can participate effectively at all stages of justice (CRPD Article 13; UN 2006).
- **United Nations Declaration on the Rights of Indigenous People (UNDRIP)** affirms self-determination and participation in decisions affecting First Nations peoples, including people with disability (UNDRIP).
- **Australia ratified OPCAT** in 2017, yet NPM coverage remains incomplete (OHCHR NPM; ACT 2025).

Key Evidence

The entanglement of First Nations people with disability in the justice system is driven by entrenched factors: historical and ongoing impacts of colonisation; systemic racism and ableism; socioeconomic disadvantage; intergenerational trauma; social and economic disadvantage; lack of support; and service gaps.

Disability in justice settings

- Multiple sources show very high rates of disability and complex needs among justice-involved people, including cognitive and psychosocial disability, FASD, hearing loss and acquired brain injury.
- A NSW study found 14% of incarcerated youth had IQs indicating possible intellectual disability and 46% were in the borderline or lower range; Aboriginal participants were about three times as likely to have possible intellectual disability (Vinson et al. 2010; NSW Health 2015).
- Another NSW study reported 24.5% of Aboriginal youth in custody had a diagnosed intellectual disability compared with 11% of non-Aboriginal youth (Indig et al. 2010).
- Mental health: in 2022, 43% of First Nations prison entrants reported a diagnosed mental health condition in their lives, compared with 60% of non-Indigenous entrants; female prison entrants reported higher rates (63%) than male prison entrants (49%) (AIHW 2023a).
- Hearing loss is very high and frequently undiagnosed among First Nations adults in custody. An NT study at Darwin Correctional Centre found around 9 in 10 Aboriginal prisoners had hearing loss, creating major barriers to communication at every procedural stage (O'Bree et al. 2020).

- FASD is a significant, often undiagnosed factor. WA detention research found 36% of assessed young people had FASD and 89% had severe neurodevelopmental impairment (Bower et al. 2018; Telethon Kids 2018).

Adult incarceration

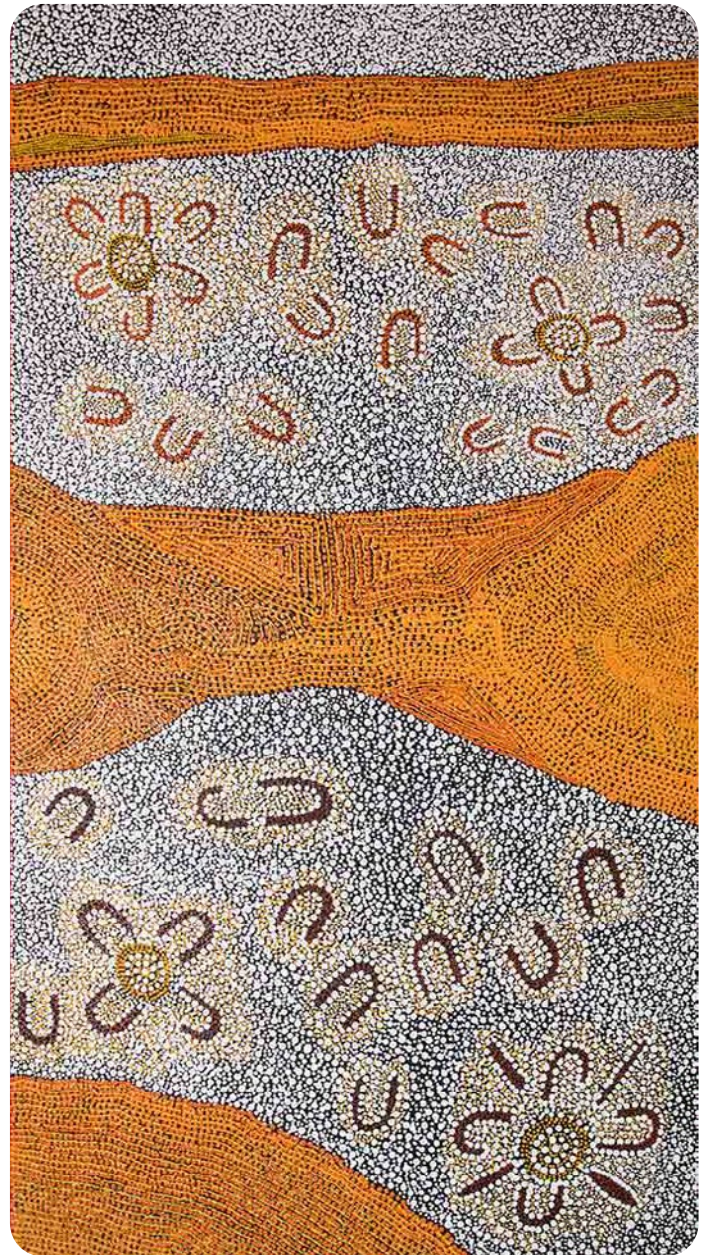
- As at 30 June 2025, First Nations adults made up 37% of all people in custody and the age-standardised imprisonment rate was 2,602 per 100,000, up from 2,400 in June 2024 (ABS 2025).
- In 2022, the First Nations adult imprisonment rate was about 14 times the non-Indigenous rate nationally; the women's rate ratio is higher than men's in several jurisdictions (AIHW 2025c).

Youth justice

- On an average day in 2022-23, First Nations young people were about 5.7% of 10-17-year-olds, yet made up 63% of those in detention and 55% under community-based supervision (AIHW 2024b).
- Nationally in 2023-24, First Nations young people were about 26.5 times as likely to be in detention and 19 times as likely to be under community-based supervision (AIHW 2025a).
- In 2021-22, about 74% of 10-13-year-olds in detention were First Nations (AIHW 2022 HPF).

Key Inquiry findings:

- **Royal Commission into Aboriginal Deaths in Custody (RCIADIC, 1991):** Fundamentally linked deaths in custody to underlying socioeconomic disadvantages stemming from colonisation and dispossession, as well as discriminatory practices within the justice system itself. Despite its 339 recommendations, incarceration rates for First Nations people have nearly doubled since 1991, and deaths in custody continue, indicating a profound failure of implementation (PC 2025).
- **Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (DRC, 2023):** Labelled the overrepresentation of First Nations people with cognitive disability in custody, particularly youth detention, a “largely hidden national crisis” . It confirmed the impact of intersecting racism and ableism (“double disadvantage”), condemned the lack of culturally safe assessment and support (including NDIS failures), and recommended systemic reforms including raising the minimum age of criminal responsibility.
- **Australian Law Reform Commission (ALRC) Pathways to Justice Report (2018):** Provided a roadmap for reform focusing on bail, sentencing alternatives, community-based options, parole, addressing fines, tackling underlying causes (including disability like FASD), and promoting justice reinvestment, all emphasizing First Nations leadership and community control (ALRC 2018). However, reviews indicate implementation has been inconsistent and inadequate across jurisdictions.



Key Recommendations

- 1. Raise the Minimum Age of Criminal Responsibility:** All Australian jurisdictions must immediately raise the minimum age of criminal responsibility to at least 14 years, without exception or carve-outs. This legislative change must be accompanied by significant investment in culturally safe, disability-informed, and therapeutic early intervention, family support, and diversionary programs for children under 14 who exhibit concerning behaviours.
- 2. Mandate Culturally Safe Disability Screening and Assessment:** Implement and fully fund mandatory, nationally consistent protocols for culturally safe and developmentally appropriate screening and comprehensive assessment for disability (including FASD, cognitive impairment, psychosocial disability, hearing loss, acquired brain injury) at all key contact points with the justice system (police interactions, court appearances, entry to custody). These tools and processes must be co-designed with First Nations disability experts and communities, and linked to timely access to diagnostic services and appropriate supports.
- 3. Fund and Expand Community-Led Diversion and Justice Reinvestment:** Commit substantial, long-term, flexible funding directly to Aboriginal Community Controlled Organisations (ACCOs) and First Nations disability organisations to establish, expand, and evaluate culturally grounded, disability-inclusive diversion programs (pre- and post-charge), justice reinvestment initiatives, and holistic bail support programs (including crisis and transitional accommodation) as genuine alternatives to remand and incarceration.
- 4. Ensure NDIS Access and Appropriate Supports in Justice Settings:** Urgently reform NDIS legislation, rules, and operational guidelines (in line with DRC and NDIS Review recommendations) to ensure culturally safe and timely access, planning, and service delivery for eligible First Nations people interacting with the justice system. This must include guaranteed continuity of NDIS support within custodial settings and seamless transition (“throughcare”) to community-based supports upon release. Fund dedicated First Nations NDIS navigators/advocates with expertise in the justice interface. Address service gaps and ‘thin markets,’ particularly in regional and remote areas, including through flexible funding models for ACCOs.
- 5. Implement Mandatory, Co-designed Training for Justice Personnel:** Develop and mandate comprehensive, ongoing, and evaluated training for all police, lawyers (prosecution and defence), judicial officers, court staff, and correctional officers. This training, co-designed and co-delivered with First Nations disability experts, must cover First Nations cultural safety, intergenerational trauma, trauma-informed practice, disability awareness (including specific training on FASD, cognitive impairment, psychosocial disability, hearing loss, and communication needs), de-escalation techniques, and upholding human rights obligations.

6. **Reform Discriminatory Laws and Practices:** Repeal mandatory sentencing laws and punitive bail legislation that disproportionately affects First Nations people with disabilities. Review and amend police powers (e.g., 'move-on' orders, public nuisance offences) that contribute to the criminalisation of poverty, homelessness, and disability-related behaviours. Fully implement ALRC recommendations regarding the consideration of systemic background factors ('Indigenous Experience Reports') in sentencing.
7. **Improve Data Collection and Establish Independent Oversight:** Invest in a national minimum dataset on First Nations people with disabilities in the justice system, ensuring data collection is disaggregated, nationally consistent, and governed by Indigenous Data Sovereignty principles. Establish or strengthen independent oversight bodies (potentially expanding the remit of existing mechanisms like OPCAT National Preventive Mechanisms or RCIADIC monitoring bodies) with specific mandates to monitor the treatment and outcomes of First Nations people with disabilities in custody and hold governments accountable for implementing reforms.
8. **Commit to Full Implementation of RCIADIC and DRC Recommendations:** Governments must publicly commit to, fully fund, and transparently report on the implementation of all relevant outstanding recommendations from the Royal Commission into Aboriginal Deaths in Custody and the Disability Royal Commission, particularly those addressing the specific needs and rights of First Nations people with disabilities concerning health care in custody, indefinite detention, use of restrictive practices, cultural safety, and diversion.
9. **Establish Specialist First Nations Disability Support Roles:** Fund the creation and embedding of dedicated, specialist First Nations disability support worker and advocacy roles within key justice system points – including police stations (e.g., custody notifications), courts, Aboriginal and Torres Strait Islander Legal Services (ATSILS), Family Violence Prevention Legal Services (FVPLS), and correctional facilities. These roles are crucial for providing culturally safe support, facilitating communication, ensuring rights are understood and upheld, and connecting individuals with necessary services.
10. **Strengthen Inter-agency Collaboration and Policy Coherence:** Establish formal, high-level, cross-portfolio mechanisms (involving Justice, Health, Disability/NDIS, Indigenous Affairs, Education, Housing, Child Protection portfolios) at both Commonwealth and State/Territory levels. These bodies must be mandated to develop, implement, and monitor integrated, funded strategies specifically addressing the intersectional needs of First Nations people with disabilities in the justice system, co-designed and overseen in genuine partnership with First Nations peak bodies and disability representative organisations.

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Date issued: May 2026

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