

28 August 2023

The Secretariat  
United Nations Committee Against Torture



## Re: Progress on implementing concluding observations on the sixth periodic report of Australia

The First Peoples Disability Network (FPDN) again wishes to thank the Committee Against Torture (CAT) for the opportunity to provide a follow-up submission regarding Australia's implementation of recommendations outlined in the present concluding observations released in December 2022.

The First Peoples Disability Network 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 represent 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.

For millennia, First Nations peoples, communities, and cultures have practised models of inclusion. Despite this, since colonisation, First Peoples with disability have been and continue to be amongst the most marginalised in Australia, experiencing double disadvantage (at times more) at the intersection of ableism and racism, often rendering them invisible and unheard.<sup>1</sup> We write to the CAT to provide further details on the human rights violations experienced by First Nations people with disability, alongside further information on the continued lack of political will, from all levels of Australian government, 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 Peoples 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. This is especially true when considering the specific international human rights instruments endorsed by Australia, such as the CRPD and UNDRIP, which are intended to protect and uphold the human rights of First Peoples with disability.

In regards to the continued human rights violations experienced by First Peoples with disability, this submission will outline progress on implementing recommendations of particular urgency to our community, including:

- Fundamental legal safeguards;
- Pretrial detention;
- Gender-based violence, including violence against Indigenous women and girls;
- Deaths in custody;
- Juvenile justice; and
- Psychiatric institutions and forensic disability closed centres.

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<sup>1</sup> S Avery, '[Culture is inclusion: A narrative of Aboriginal and Torres Strait Islander people with disability](#),' First Peoples Disability Network (Australia), 2018, p 14, accessed 17 August 2023.

This submission is endorsed by:

[Change the Record](#)

[Disability Advocacy Network Australia \(DANA\)](#)

[National Ban Spit Hoods Coalition](#)

[Sisters Inside](#)

[Women With Disabilities Australia \(WWDA\)](#)

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## Fundamental legal safeguards

FPDN continues to hold significant concerns regarding the lack of fundamental legal safeguards available to First Peoples with disability during all stages of detention. First Peoples with disability continue to be subjected to excessive force and brutality from the very outset of deprivation of liberty during arrest, and continue to be deprived of access to adequate legal representation, healthcare and safety following arrest.

### **Paragraph 13 of the Committee’s concluding observations states that:**

*“The State party should ensure that all fundamental legal safeguards are guaranteed, both in law and in practice, for all detained persons from the outset of their deprivation of liberty, including the right to:*

*(a) Be informed immediately in a language that they understand of the reasons for arrest, the nature of any charges against them and their rights;*

*(b) Be assisted by a lawyer, including during the interrogation stages, and, if necessary, to free legal aid.”*

In practice, from the moment First Peoples with disability come into contact with police, they are characterised as ‘high risk’ and subjected to racist and ableist notions of being in need of containment. Increasingly, FPDN is seeing the way this leads to First Peoples with disability being brutalised by police, instead of having their human rights upheld and access to critical community-based services facilitated.

### **Case study**

In Taree of August 2023, an 18-year-old Aboriginal man with disability was violently thrown to the ground during a NSW Police arrest while having a seizure. Footage captures the police officer using a foot sweep, with the man falling then beginning to have a seizure whilst the officer continues to drag him to the police vehicle.

An Aunty of the Aboriginal teenager has spoken to media, stating that he was arrested under suspicion as two homes were attempted to have been broken into. She then continued to reveal that her nephew has been diagnosed with ADHD and Fetal Alcohol Spectrum Disorder (FASD) and has been on the disability pension since he was 16 years of age. No ambulance was called during the arrest, and concerns of medical malpractice as the Aboriginal teenager spent the following night in a cell describing to his Aunt he felt like “I was dying in that cell last night, I couldn’t move.”<sup>2</sup>

As the above case study demonstrates, First Peoples with disability are not only being deprived of fundamental legal safeguards and being denied accessible information regarding their rights during arrest, but are having such rights actively violated.

Following arrest and during the interrogation stages, we remain equally concerned First Peoples with disability are not receiving access to adequate legal representation. FPDN continues to emphasise the paramount importance of all detained persons being given access to free legal aid, however we are gravely concerned that this access cannot be

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<sup>2</sup> T Rose and C McLeod, ‘[Aboriginal 18 year old with disability thrown to ground during NSW police arrest while having seizure](#),’ The Guardian, 18 August 2023, accessed 21 August 2023.

facilitated with Aboriginal legal services across Australia “on the brink of collapse” as they grapple with a nationwide lack of funding.<sup>3</sup> We implore the CAT to further investigate the impacts this funding crisis presents for ensuring fundamental legal safeguards are upheld.

**Paragraph 14 of the Committee’s concluding observations also states that:**

*“The State party should also take all necessary measures to end the use of spit hoods in all circumstances across all jurisdictions.”*

As a member of the [National Ban Spit Hoods Coalition](#), we continue to assert that the use of spit hoods is a threat to human life and dignity.<sup>4</sup> Whilst FPDN welcomes the Australian Federal Police (AFP)’s decision to end the use of spit hoods in April 2023, the use of spit hoods continues across several Australian jurisdictions, including the Northern Territory (NT) and Western Australia (WA).

As advocates from the National Ban Spit Hoods Coalition have emphasised, internal directives or operational bans are not enough, given the existence of extenuating circumstances which are used to justify their continued use, or the possibility of those operational bans being reversed.<sup>5</sup> As a part of these campaigns, FPDN affirms that a legislative ban on spit hoods is the only avenue to ensure spit hoods are permanently banned across all settings, including not only prisons and watch houses, but hospitals, psychiatric wards, forensic disability closed centres, disability group homes and all other places of detention. First Peoples with disability are institutionalised within.

A legislative ban in all Australia states and territories is the only option which is written into law, acts as a safeguard against future policy reversal, is transparent and open to scrutiny, provides high level guidance for practice, demonstrates the seriousness of the issue, and as the CAT has highlighted, meets minimum standards consistent with international law.<sup>6</sup>

## Case study

In WA, police and prisons continue to use spit hoods on children, including those detained in the infamous Banksia Hill Detention Centre, which has been criticised over its treatment of young people - particularly young First Nations people with disabilities - with the Aboriginal Legal Service in WA labelling it “child abuse”.<sup>7</sup>

In late 2022, documents filed in the federal court as part of a class action against the West Australian government alleged an Autistic teenage girl detained at Banksia Hill between May 2018 and March 2020 suffered “extremely traumatic” restraining, “including handcuffing, leg shackles and spit hoods.”<sup>8</sup> This was despite WA Corrective Services Commissioner James McMahon making a directive to discontinue the use of spit hoods within the juvenile detention centre in 2016.<sup>9</sup>

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<sup>3</sup> G Mitchell, ‘[Aboriginal Legal Services to scale back work nationally amid funding crisis](#),’ 18 April 2023, accessed 28 August 2023.

<sup>4</sup> National Ban Spit Hood Coalition, ‘[A Bill to ban spit hoods: Briefing note for government & legislators](#),’ 2022, accessed 15 August 2023.

<sup>5</sup> T Morgan and A Perera, ABC News, ‘[Acting NT Children’s Commissioner Nicole Hucks calls for formal ban of spit hoods](#),’ ABC News, 6 June 2023, accessed 15 August 2023.

<sup>6</sup> National Ban Spit Hood Coalition, ‘[A Bill to ban spit hoods: Briefing note for government & legislators](#),’ 2022, accessed 15 August 2023.

<sup>7</sup> S Collard, ‘[Breaking the cycle: protesters demand solutions for youth detainees of Banksia Hill](#),’ *The Guardian*, 15 May 2023, accessed 15 August 2023.

<sup>8</sup> S Collard, ‘[Banksia Hill: autistic teenage girl ‘treated like a dog’ at detention centre, class action alleges](#),’ *The Guardian*, 13 January 2023, accessed 15 August 2023.

<sup>9</sup> K Campbell, ‘[Spit hoods on juveniles at Banksia Hill dropped after shock Four Corners footage](#),’ *Perth News Now*, 31 July 2016, accessed 17 August 2023.

## Pretrial detention

The crisis of over-incarceration for First Peoples with disability has continued to escalate since the CAT released its concluding observations in December 2022. FPDN strongly condemns the increasing number of our people being held on remand, with this increase being driven by both a lack of community-based alternatives to detention, and reactionary ‘tough on crime’ policy agendas that encourage the tightening of bail laws.

### Paragraph 16 of the Committee’s concluding observations states that:

*“The State party should ensure that the regulations governing pretrial detention are scrupulously respected and that such detention is resorted to only in exceptional circumstances and for limited periods, taking into account the principles of necessity and proportionality. It should also intensify efforts to significantly reduce the number of pretrial detainees by making more use of alternatives to detention, in particular with regard to Aboriginal and Torres Strait Islander adults and children.”*

Despite the CAT’s insistence that pretrial detention only be used as a last resort, Australian states and territories continue to use the criminal justice system as the default care provider for our people, 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 Peoples with disability, especially those with psychosocial disability and cognitive impairment, are embedded and entrenched by the absence of coherent frameworks for holistic and community-based disability, education, housing and human services support.<sup>10</sup>

### Case study

In February 2023, a WA District Court judge apologised to a 20-year-old Kalgoorlie man with severe cognitive impairment who spent 451 days in custody — despite having been granted bail.<sup>11</sup>

The man, who was diagnosed with fetal alcohol spectrum disorder (FASD), suffered from schizophrenia and had a history of solvent abuse, had been granted bail but was never released because of a lack of suitable accommodation in the community through the National Disability Insurance Scheme (NDIS).

Punitive bail law reform, particularly targeted at isolating criminalised youth from their support networks within the community, has similarly led to an increasing number of First Nations children with disability being held in detention before sentencing.<sup>12</sup> In May 2023, figures from the New South Wales Bureau of Crime Statistics and Research (NSW BOCSAR) showed the proportion of Aboriginal people in NSW prisons is the highest on record.<sup>13</sup> The Aboriginal Legal Service (NSW/ACT) (ALS) and the Public Interest Advocacy Centre (PIAC) asserted this data “reflects the impact of over-policing of Aboriginal

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<sup>10</sup> First Peoples Disability Justice Consortium, [‘Aboriginal and Torres Strait Islander Perspectives on the recurrent and indefinite detention of people with cognitive and psychiatric impairment.’](#) April 2016, accessed 18 August 2023.,

<sup>11</sup> J Lucas, [‘Disabled Kalgoorlie man spends 451 days in custody despite being granted bail.’](#) ABC News, 6 February 2023, accessed 18 August 2023.

<sup>12</sup> Sisters Inside, [‘National Human Rights organisation says Queensland’s youth crime policy will fail everyone.’](#) 20 February 2023, accessed 18 August 2023.

<sup>13</sup> NSW Bureau of Crime Statistics and Research, [‘NSW Custody Statistics: Quarterly update March 2023.’](#) May 2023, accessed 14 August 2023.

communities in NSW, a 'push' factor driving the numbers of Aboriginal adults and young people on remand."<sup>14</sup>

In Queensland (QLD), a suite of highly regressive youth justice law changes has made bail harder to get for more young people and introduced measures to make breach of bail an offence for children; the QLD government deciding to override its own Human Rights Act for the first time in order to enact the latter.<sup>15</sup> These changes have contributed to QLD detaining the highest number of young people in the country – with 90% of children in custody waiting for their cases to be resolved.<sup>16</sup>

## Case study

Jordan is a 16-year-old First Nations young woman with disability, with no immediate family to care for her in her remote Cape York community. Although Jordan has been in the "care" of the state since she was four years old, it is not care that most parents would recognise.

No regular place to sleep and sporadic medical care for the range of cognitive impairments she was likely born with as a result of absorbing drugs and alcohol in-utero, means she struggles to understand the consequences of her actions. In late 2022, she started getting in trouble. At first spraying graffiti, then consumption of alcohol and allegations of involvement in two serious assaults.

What that has meant for her, like so many other First Nations children with disability in QLD, is a bleak spiral into the state's youth justice system. Throughout the beginning of 2023, Jordan spent 94 days in detention over the course of three months, awaiting sentencing — not convicted of any crime. For 30 days, she was locked up in her cell for 21 to 24 hours per day. On three of those days, she was locked in her cell for 24 hours a day.

Upon sentencing, Judge Tracy Fantin in the Cairns Children's Court heard there was only one day of schooling, maybe two, and described Jordan's time in Townsville's youth detention centre as an experience that subjected her to "trauma".<sup>17</sup>

Of critical concern regarding Jordan's experience of pretrial detention is the prolonged use of solitary confinement, with a direct correlation between reducing out-of-cell hours and self-harm and suicide attempts among children.<sup>18</sup> As advocates have raised for decades, pretrial detention is an ongoing crisis in particular for both children and adult First Peoples with psychosocial disability entering remand, with the initial stages of incarceration presenting the greatest risk of self-harm and suicide, and the proportion of deaths among those incarcerated on remand being three and a half times greater than in the general prison population.<sup>19</sup>

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<sup>14</sup> G Torre, '[Over-representation of Aboriginal people in New South Wales prisons "highest on record"](#),' *National Indigenous Times*, 30 May 2023, accessed 14 August 2023.

<sup>15</sup> K McKenna, '[Queensland parliament has passed tough new laws targeting young offenders. This is what's changing.](#)' *ABC News*, 16 March 2023, accessed 14 August 2023.

<sup>16</sup> QLS Proctor, '[Report: Queensland has highest youth detention rate.](#)' *QLS Proctor*, 15 November 2022, accessed 15 August 2023. <https://www.qlsproctor.com.au/2022/11/report-queensland-has-highest-youth-detention-rate/>.

<sup>17</sup> E Fanning, '[Homeless and disabled. Jordan was kept in Queensland youth detention for more than three months.](#)' *ABC News*, 1 April 2023, accessed 14 August 2023.

<sup>18</sup> E Fanning, '[Homeless and disabled. Jordan was kept in Queensland youth detention for more than three months.](#)' *ABC News*, 1 April 2023, accessed 14 August 2023.

<sup>19</sup> Australian Institute of Criminology, *Deaths in Custody Australia No 8: Australian Deaths in Custody and Custody-Related Police Operations*, 1993-94, February, 1995, p13; McDonald, D., and D. Biles '*Methodological Issues in the Calculation of Over Representation and Exposure to Risk in Custody in Deaths in Custody Australia*, 1980-89: Research Papers of the Criminology

# Gender-based violence, including violence against Indigenous women and girls

FPDN continues to remain significantly concerned by the alarmingly high rates of gender-based violence First Nations women, children and gender diverse people with disability are subjected to, with consensus among Australian and international researchers that this cohort experiences violence and abuse at a much higher rate than the rest of the population.<sup>20</sup>

The gender-based violence experienced by First Nations women, children and gender diverse people with disability is driven by compounding systemic forces including gender inequality, racism, ableism, ageism, classism, queerphobia and transphobia.<sup>21</sup> Critically, it must be acknowledged that these oppressive forces do not come from First Nations cultures across Australia, but rather that the violence First Nations women, children and gender diverse people with disability experience originates at colonisation.

**Paragraph 22 of the Committee’s concluding observations states that the State party should:**

*“Ensure that all cases of gender-based violence – in particular against Indigenous women and girls and women and girls with disabilities, and especially those involving actions or omissions by State authorities or other entities that engage the international responsibility of the State party under the Convention – are thoroughly investigated, that the alleged perpetrators are prosecuted and, if convicted, punished appropriately and that the victims receive redress, including adequate compensation.”*

Whilst the family violence experienced by First Nations women and gender diverse people with disability is more severe than that experienced by non-Indigenous women with disability and First Nations women without disability, this is far from the only form of gender-based violence our community is subjected to, with violence on the interpersonal level often linked to institutional forms of violence on the systemic level. For example, within both the child protection and criminal justice systems, First Nations women, children and gender diverse people with disability are exposed to extensive institutional violence, with these systems often choosing to punish rather than protect Aboriginal women and girls.<sup>22</sup>

## Case study

In March 2023, Julieanne Williams, a Ngunnawal woman and trauma survivor living with psychosocial disability, alleged in court that she was tortured and treated in a “cruel” and “inhuman” way by prison officers who pinned her down, forcibly strip-searched her while holding a knife, and ignored screamed warnings that she couldn’t breathe and was experiencing chest pains.<sup>23</sup>

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Unit of the Royal Commission into Aboriginal Deaths in Custody Institute of Criminology, Canberra, 1992, p.444 (and research papers 7, 10 and 11 in that volume).

<sup>20</sup> Cripps, K., Miller, L., & Saxton-Barney, J. (2010). [‘Too Hard to Handle’: Indigenous Victims of Violence with Disabilities](#). *Indigenous Law Bulletin*, 7(21), 3-6.

<sup>21</sup> Australian Human Rights Commission. (2022). [Wiyi Yani U Thangani First Nations Women’s Safety Policy Forum Delegate Statement](#), 2022, accessed 15 August 2023.

<sup>22</sup> The Institute for Collaborative Race Research (ICRR) and Sisters Inside. (2021). [The State as Abuser: Coercive Control in the Colony: Joint Submission from Sisters Inside and the Institute for Collaborative Race Research on Discussion Paper 1 of the Women’s Safety and Justice Taskforce](#), 2021, p. 11, accessed 17 August 2023..

<sup>23</sup> C Knaus, [‘Indigenous woman alleges she was subject to torture and inhuman treatment in ACT prison’](#), *The Guardian*, 6 March 2023, accessed 25 August 2023.

Court documents show that Williams had been moved to the jail's crisis support unit due to her distress at a decision refusing her leave to attend her grandmother's funeral. A guard noticed her putting something down her pants and assumed, wrongly, it was a weapon or other contraband. Williams was, in fact, menstruating and had placed sanitary tissues down her pants.<sup>24</sup>

A team of officers decided to use force to strip-search her. Before they entered the cell, Williams says she was lying on her bed in a "calm state".<sup>25</sup> She had a pacemaker for a heart condition and a collapsed lung, according to court documents. Prison authorities allegedly knew about her medical conditions, but did not bring a nurse or doctor with them.

Williams was pinned down. Officers discussed using a knife to cut her clothes off. According to transcripts of the recordings of the incident, one officer asked colleagues "who's got the knife?", prompting another to reply: "I do". The first officer then said to Williams: "If you comply, I'll get them [your clothes] off you and we'll get this over and done with."<sup>26</sup> Williams yelled that she couldn't breathe and was experiencing pains in her chest. She alleges this did nothing to interrupt the search.

As demonstrated by the horrific example of human rights abuses above, sexual, physical, and verbal violence in prison and youth detention settings perpetuates the cycle of violence. This institutional violence frequently leads to the re-traumatisation of First Nations women, children and gender diverse people with disability; many of whom have already experienced multiple forms of trauma, including family violence, rape, sexual assault, gender-based and/or racialised violence.<sup>27</sup> FPDN notes this violence is particularly acute for Sistergirls detained in men's prisons.

Similarly, First Nations women, children and gender diverse people with disability are disproportionately harmed by disability-specific forms of violence, such as denial or overdosing of medication, food, and water, confinement and restraint, alteration or control of assistive equipment, or threats to withdraw care.<sup>28</sup> Research suggests that First Nations people are more subject to restrictive practices including chemical, environmental, mechanical and physical restraints, alongside seclusion and segregation in closed places such as prisons, forensic mental health units, disability group homes and residential aged care settings.<sup>29</sup> The use of restrictive practices on First Nations women, children and gender diverse people with disability must be understood in the broader context of their higher representation in systems of incarceration and control, such as the child protection and legal systems.<sup>30</sup>

In particular, gendered forms of restrictive practices, such as non-consensual and coercive sterilisation, menstrual suppression, contraception and abortion, forced child removal and

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<sup>24</sup> C Knaus, '[Indigenous woman alleges she was subject to torture and inhuman treatment in ACT prison](#),' *The Guardian*, 6 March 2023, accessed 25 August 2023.

<sup>25</sup> C Knaus, '[Indigenous woman alleges she was subject to torture and inhuman treatment in ACT prison](#),' *The Guardian*, 6 March 2023, accessed 25 August 2023.

<sup>26</sup> C Knaus, '[Indigenous woman alleges she was subject to torture and inhuman treatment in ACT prison](#),' *The Guardian*, 6 March 2023, accessed 25 August 2023.

<sup>27</sup> First Peoples Disability Justice Consortium, '[Aboriginal and Torres Strait Islander Perspectives on the recurrent and indefinite detention of people with cognitive and psychiatric impairment](#),' April 2016, accessed 18 August 2023.

<sup>28</sup> Milberger, S., Israel, N., LeRoy, B., Martin, A., Potter, L., & Patchak-Schuster, P. (2003). Violence against women with physical disabilities. *Violence and Victims*, 15, 581–590.

<sup>29</sup> Women with Disabilities Australia (WWDA), [Response to Restrictive Practices Issues Paper of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#), 2021, p 66, accessed 18 August 2023.

<sup>30</sup> Women with Disabilities Australia (WWDA), [Response to Restrictive Practices Issues Paper of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#), 2021, p 66, accessed 18 August 2023.



denial of support for sexual activity and intimate relationships,<sup>31</sup> continue to target First Nations women and gender diverse people with disabilities. Forced sterilisation, for example, has been used as an ongoing weapon of genocide, upholding racially violent ideas around eugenics and contributing to dispossession, displacement and the 'elimination' of First Nations people.

Although FPDN is pleased to see Commonwealth, state and territory governments commit to developing and implementing *Safe and Supported: Aboriginal and Torres Strait Islander First Action Plan 2023-2026* under *Australia's National Plan to End Violence Against Women and Children 2022-2032 (National Plan)*, we echo the calls of Aboriginal community controlled family violence prevention and legal service, [Djirra](#), in calling for a stand-alone national plan and an increase in funding for Aboriginal Family Violence Prevention and Legal Services. As Djirra's CEO Ms Antoinette Braybrook has stated, "meaningful change for our women will come from a self-determined, Aboriginal-led standalone plan, not one that is an add on to a mainstream approach."<sup>32</sup>

The need for a standalone national plan to address the gender-based violence experienced by First Nations women, children and gender diverse people with disabilities is demonstrated by accounts provided by survivors and the families of our women and children who continue to consistently report that:

- Authorities fail to respond to our concerns;
- Calls for help are dismissed and ignored;
- When reporting violence or persons missing, we are met with claims that the victim is 'itinerant' or has 'gone walkabout'; and
- The concerns of our women, children and communities are not listened to or considered worthy of investigation.<sup>33</sup>

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<sup>31</sup> Women with Disabilities Australia (WWDA), [Response to Restrictive Practices Issues Paper of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#), 2021, p 36, accessed 18 August 2023.

<sup>32</sup> R Knowles, '[Govt releases first dedicated Aboriginal and Torres Strait Islander action plan to end domestic violence](#),' *NITV*, 16 August 2023, accessed 18 August 2023.

<sup>33</sup> Partnership 4 Justice in Health (P4JH), '[Submission to the Inquiry into missing and murdered First Nations women and children](#),' 2022, p 1, accessed 18 August 2023.

## Deaths in custody

Deaths in custody of First Peoples with disability has been well documented in previous Australian inquiries including the Royal Commission into Aboriginal Deaths in Custody and the Protection and Detention of Children in the Northern Territory.

The final 1991 report of the *Royal Commission into Aboriginal Deaths in Custody* (RCIADIC) clearly demonstrated the systemic lack of care First Peoples with disability receive within places of detention, leading to many preventable deaths. Since the release of this report three decades ago, there continues to be only inadequate, half-hearted responses to implementing the RCIADIC recommendations from successive Australian governments. Incarceration rates and deaths in custody are increasing, with the Guardian reporting at least 517 Aboriginal and Torres Strait Islander people have died in custody since 1991<sup>34</sup>, with over 40 per cent of these deaths involving First Peoples who had a psychosocial or cognitive disability.

**Paragraph 36 of the Committee’s concluding observations states that the State party should:**

*“Assess and evaluate the existing programmes for the prevention, detection and treatment of chronic, degenerative and infectious diseases in prisons, and review the effectiveness of strategies for the prevention of suicide and self-harm.”*

Intake processes across all sites of detention in Australia are continuing to fail when it comes to screening First Peoples for disabilities and providing appropriate disability supports and accommodations and an adequate standard of healthcare. By placing the onus on individuals to disclose their disability leading up to and upon entering detention, police and prison authorities continue to ignore the lifetime trajectory many First Nations people follow in which their disability goes undetected and undiagnosed. When intake processes do not include the use of culturally appropriate diagnostic screening tools, by staff who have comprehensive disability awareness training, the consequences of these failures are often deadly.

In particular, FPDN raises the CAT’s attention to the ongoing crisis faced by First Peoples with psychosocial disability and cognitive impairment entering detention, with prolonged solitary confinement and the denial of adequate mental health support contributing to preventable deaths.

### Case study

20 days ago, on 5 August 2023, Tian-Jarrah ‘TJ’ Denniss, a Wiradjuri man, took his own life at Silverwater prison in New South Wales (NSW)<sup>35</sup>. Denniss’ family said prolonged solitary confinement without adequate mental health support, despite repeated suicide attempts and multiple transfers within the NSW prison system, contributed to his death.<sup>36</sup>

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<sup>34</sup> The Guardian, ‘[Deaths inside. Indigenous Australian deaths in custody, 2021](#),’ n.d., accessed 14 August 2023.

<sup>35</sup> S Collard, ‘[Family of Aboriginal man TJ Denniss say lack of mental health support contributed to death in custody](#),’ 14 August 2023, accessed 18 August 2023.

<sup>36</sup> S Collard, ‘[Family of Aboriginal man TJ Denniss say lack of mental health support contributed to death in custody](#),’ 14 August 2023, accessed 18 August 2023.

At the time, Denniss had been suing the ACT government after allegedly being depicted in a racist “hangman” game drawn on a whiteboard by prison guards. The hangman sketch was drawn inside the Alexander Maconochie Centre (AMC) south of Canberra on a whiteboard in May 2018, with the drawing allegedly showing the initials of his name. A photograph of the image was passed around by correctional staff and detainees at the prison. Dennis sued the ACT government in 2021, alleging a breach of his human rights.<sup>37</sup>

As we are sure the CAT can appreciate, it is impossible to capture in words the heartbreak, trauma and immeasurable grief our families and communities experience following the deaths of loved ones in custody. The continued failure of police and corrective services across states and territories to address systemic racism and incarceration contributing to deaths in custody, such as racial profiling and racism in healthcare, homelessness and closing youth detention centres speaks to the heart of the injustices and hurt faced by First Peoples since colonisation began.

Whilst FPDN welcomes greater public transparency and accountability of all governments when it comes to reporting and monitoring deaths in custody, we wish to draw the CAT’s attention to the federal government’s recent failure to consult with impacted families when announcing moves to monitor deaths in custody data in real time by the Australian Institute of Criminology (AIC)<sup>38</sup>. As Apryl Day, who started the national [Dhadjowa Foundation](#) to support and advocate for families whose loved ones have died in custody following the death of her mother Auntie Tanya Day told *The Guardian*:

*“They are putting my mum and our loved ones into a database and dehumanising them and making them another statistic which is what we actively try not to do when campaigning and advocating for our loved ones.*

*They are extracting information and putting all of our pain and our heartache and my mum’s life and legacy that she left behind into just another number on a database.”<sup>39</sup>*

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<sup>37</sup> S Collard, [‘Family of Aboriginal man TJ Denniss say lack of mental health support contributed to death in custody,’](#) 14 August 2023, accessed 18 August 2023.

<sup>38</sup> AAP, [‘Indigenous deaths in custody will now have to be reported in real time,’](#) 21 June 2023, accessed 18 August 2023.

<sup>39</sup> S Collard, [‘Indigenous advocates and families say tallying Australian deaths in custody does not address fundamental causes,’](#) 22 June 2023, accessed 18 August 2023.

## Juvenile justice

In its review, the CAT expressed serious concerns about the conditions and treatment children in custody in Australia experience. We're grateful to have had the opportunity to submit to the CAT on the conditions experienced by children, particularly First Nations children with disability, and appreciate the CAT's recognition of the deep racism and ableism at the heart of Australia's carceral systems in its report.

Comments made in May 2023 by West Australian premier Mark McGowan in response to young people's resistance at Banksia Hill Detention Centre, asserting "that disabilities, including fetal alcohol spectrum disorders, were being used as "an excuse" for "appalling behaviour,"<sup>40</sup> speak to this institutional racism and ableism.

**Paragraph 38 of the Committee's concluding observations states that the State party should:**

*(a) Raise the minimum age of criminal responsibility, in accordance with international standards;*

*(b) Take all necessary measures to reduce the incarceration rate of indigenous children and ensure that children with disabilities are not detained indefinitely without conviction and that their detention undergoes regular judicial review.*

In the short time since the CAT made these concluding observations, the situation for children in custody in many parts of the country has deteriorated further. Recent law changes in the state of Queensland are just one example.<sup>41</sup>

In previous submissions to the CAT and SPT, we and our colleagues in civil society have highlighted how children's human rights are routinely violated while held in police watch houses in QLD<sup>42</sup>. In 2019, the conditions experienced by children in QLD watch houses had been reported by the high-profile news program Four Corners<sup>43</sup>.

As the CAT will recall, QLD is one of the Australian jurisdictions which refused the SPT access to places of detention in late 2022.<sup>44</sup> As the CAT will also recall, the age of criminal responsibility in QLD is just 10 years old.

### Case study

Twice in 2023, the QLD government has suspended the Human Rights Act to enable expanding its youth detention system:

#### 1. Criminalising breach of bail by children

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<sup>40</sup> R Knowles, '[WA Premier's claims that Banksia Hill inmates use disability as an excuse draw ire from peak body](#),' *NITV*, 16 May 2023, accessed 25 August 2023.

<sup>41</sup> For example, the situation in Western Australia remains dire. As previously notified to the CAT, the mistreatment of and violation of the human rights of children, including the targeted violation of the rights of First Nations children and children with disability, in the Banksia Hill Youth Detention Centre and WA legal system is egregious. See [here](#), [here](#) and [here](#).

<sup>42</sup> Human Rights Law Centre, NATSILS, Change the Record, '[Ending human rights abuses behind bars](#),' 3 October 2022, accessed 28 August 2023.

<sup>43</sup> ABC News, '[Inside a maximum security police watch house where children are locked up](#),' *Four Corners*, 13 May 2019, accessed 17 August 2023.

<sup>44</sup> E Gillespie, '[Queensland changes laws to accommodate UN prison inspectors](#),' *The Guardian*, 23 May 2023, accessed 15 August 2023.

In March 2023, the QLD government made breach of bail a crime for children, with a maximum penalty of one year in detention. This obviously required suspension of the state's Human Rights Act.

## 2. Legalising indefinite detention of children in police watch houses

On 24 August 2023, only days before we were due to submit this document to the CAT, the QLD government passed laws allowing it to detain children in adult prisons and police watch houses indefinitely. Doing so required setting aside the Human Rights Act again.

This came after litigation in the Supreme Court to free 3 children held in watch houses. The government transferred the children before a judgement could be delivered.<sup>45</sup> The state's Solicitor General had advised the government that children may have been illegally detained for years.<sup>46</sup>

Unlike the previous breach of bail bill, the government used a loophole in parliamentary procedure to avoid subjecting the law change to parliamentary scrutiny through a committee process.

In a media release titled 'Changes to ensure business as usual', the Minister for Youth Justice said the legislation would 'validate and clarify 30 years of custom and practice that QLD has used to hold young people in watchhouses'<sup>47</sup>. The next morning, the Premier said the new law "is not something new" and "formalises a practice that has been in place for 30 years"<sup>48</sup>.

Violating children's, First Nations Peoples' and disabled people's human rights shouldn't be the usual business of a justice system.

As of 25 August 2023, the federal government has not raised concerns about the actions of the QLD government. We're not aware of any action by the federal government to prevent or mitigate the harm these laws will do to children, families and communities.

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<sup>45</sup> B Smee, '[Court orders urgent transfer of three children detained unlawfully in Queensland watch houses](#),' *The Guardian*, 4 August 2023, accessed 14 August 2023.

B Smee, '[Queensland police silent on fallout from court order to transfer three children from watch houses](#),' *The Guardian*, 7 August 2023, accessed 14 August 2023.

B Smee and E Gillespie, '[Keeping kids in watch houses: why the Queensland government could change the law to suit itself](#),' *The Guardian*, 25 August 2023, accessed 25 August 2023.

<sup>46</sup> E Gillespie and A Messenger, '[Queensland children may have been illegally detained for years. advises state's solicitor general](#),' *The Guardian*, 24 August 2023, accessed 25 August 2023.

<sup>47</sup> Queensland Government, '[Changes to ensure business as usual](#),' 23 August 2023, accessed 25 August 2023.

<sup>48</sup> K McKenna and R Riga, '[Queensland premier defends decision to fast-track proposed changes allowing police watch houses to detain children](#),' 24 August 2023, accessed 25 August 2023.

# Psychiatric institutions and forensic disability closed centres

FPDN continues to demand accountability from the federal government regarding the overrepresentation of First Peoples with disability detained, often indefinitely, in psychiatric institutions, forensic disability closed centres and other sites of detention. As we have long asserted, by its very nature, the indefinite detention of First Peoples with disability is cruel, arbitrary, unnecessary, and causes extreme harm.

**Paragraph 39 of the Committee's concluding observations states that the State party should:**

*(a) Repeal any law or policy and cease any practice that enables the deprivation of liberty on the basis of impairment and that enables forced medical interventions on persons with disabilities, particularly Aboriginal and Torres Strait Islander persons with disabilities and persons with intellectual or psychosocial disabilities;*

*(b) Stop committing persons with intellectual or psychosocial disabilities who are considered unfit to stand trial or not guilty due to "cognitive or mental health impairment" to custody and for indefinite terms or for terms longer than those imposed in criminal convictions;*

*(c) The use of chemical and physical restraints and seclusion under the guise of "behaviour modification" and restrictive practices against persons with disabilities, including children;*

*(d) The reported abuse of young Aboriginal and Torres Strait Islander persons with disabilities by fellow patients and staff, the use of prolonged solitary confinement, particularly of persons with intellectual or psychosocial disabilities, and the lack of effective, independent, confidential and accessible channels for lodging complaints (arts. 2, 11 and 16).*

Since the CAT made its concluding observations, FPDN has welcomed law reform in WA, with the introduction of the *Criminal Law (Mental Impairment) Bill 2022* set to completely reform the *Criminal Law (Mentally Impaired Accused) Act 1996* and put an end to the indefinite detention of people who are deemed unfit to stand trial.<sup>49</sup> Despite the introduction of this reform in WA, however, we remain gravely concerned that the Australian federal government has not taken immediate action to abolish the use of indefinite detention of people with disabilities and release all people with disabilities, currently detained indefinitely. We note that several Australian Disability Representative Organisations (DRO's) made such calls to abolish the use of indefinite detention at this year's 16th Session Of The Conference Of States Parties To The CRPD (COSP16) and have not been met with a response by the federal government.

We are likewise deeply troubled by the ongoing use of restraints, seclusion and other forms of restrictive practices in sites of detention including psychiatric institutions, forensic disability closed centres, adult prisons, watchhouses and youth detention centres. As the CAT may be aware, the use of restrictive practices has been identified as a key area of inquiry for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

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<sup>49</sup> D Brennan, '[Advocates welcome WA justice reforms in Criminal Law \(Mental Impairment\) Bill](#),' 16 March 2023, accessed 28 August 2023.

(the Disability Royal Commission).<sup>50</sup> In July 2023, the Disability Royal Commission released its extensive research report, *Restrictive practices: A pathway to elimination*, clearly articulating the way in which restrictive practices are at odds with the human rights of people with disability and represent a significant form of violence and coercion.<sup>51</sup> The report proposes an eight-point action plan for eliminating restrictive practices, urging governments of Australia to dismantle the ecological system of violence, coercion and control that enables their use.<sup>52</sup> To date, we are not aware of any response to this critical action plan from any level of Australian government.

As FPDN outlined in our previous submission last year to the CAT, advocates continue to indicate that First Nations people with disability are disproportionately affected by restrictive practices, particularly solitary confinement, a practice also referenced to by different state and territory governments as ‘seclusion’, ‘segregation’, ‘separation’, and ‘isolation’.<sup>53</sup> Suggested reasons behind this range from institutional racism, the common practice of separating First Peoples with disability from mainstream prison populations, and the overrepresentation of First Peoples in admissions to mental health services and psychiatric intensive care units.<sup>54</sup> In considering the Disability Royal Commission’s recent report on restrictive practices, FPDN calls attention to the way in which the use of restrictive practices in relation to First Peoples with disability continues to be shaped and rationalised by other forms of prejudice and discrimination, including racism and settler colonialism.<sup>55</sup>

## Case study

In June 2023, Guardian Australia reported that a disabled Aboriginal teenager, Michael\*, now 19, was subjected to solitary confinement regularly kept in his room for more than 20 hours during 744 days at Queensland’s Cleveland Youth Detention Centre.<sup>56</sup>

Michael has intellectual disabilities and was referred to the adolescent forensic mental health service upon arriving at Cleveland in 2021. But the court heard he received no treatment because the service did not have the capacity to see young people with trauma-related mental health issues.

The treatment of Michael at Cleveland Youth Detention Centre – where he was likely locked in solitary confinement for more than 500 days – was reported in the media as “the most egregious” case on record in Australia. This was overwhelmingly due to chronic staff shortages at the centre.<sup>57</sup> Human rights organisations say the case likely amounts to “torture” and a breach of Queensland’s own Human Rights Act.

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<sup>50</sup> C Spivakovsky, L Steele and D Wadiwel, [‘Research Report: Restrictive practices: A pathway to elimination.’](#) July 2023, p 15, accessed 28 August 2023.

<sup>51</sup> C Spivakovsky, L Steele and D Wadiwel, [‘Research Report: Restrictive practices: A pathway to elimination.’](#) July 2023, p 1, accessed 28 August 2023.

<sup>52</sup> C Spivakovsky, L Steele and D Wadiwel, [‘Research Report: Restrictive practices: A pathway to elimination.’](#) July 2023, p 10, accessed 28 August 2023.

<sup>53</sup> Disability Royal Commission, [‘Overview of responses to the Restrictive Practices Issues Paper, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.’](#) April 2021, p 6, accessed 28 August 2023.

<sup>54</sup> Disability Royal Commission, [‘Overview of responses to the Restrictive Practices Issues Paper, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.’](#) April 2021, p 6, accessed 28 August 2023.

<sup>55</sup> C Spivakovsky, L Steele and D Wadiwel, [‘Research Report: Restrictive practices: A pathway to elimination.’](#) July 2023, p 167, accessed 28 August 2023.

<sup>56</sup> B Smees and B Kolovos, [‘Case of Queensland teenager who likely spent 500 days in solitary ‘most egregious’ on record.’](#) *The Guardian*, 27 June 2023, accessed 28 August 2023.

<sup>57</sup> B Smees and B Kolovos, [‘Case of Queensland teenager who likely spent 500 days in solitary ‘most egregious’ on record.’](#) *The Guardian*, 27 June 2023, accessed 28 August 2023.

## Final comments

First Peoples with disability have been denied justice for far too long. Our people continue to be brutalised, institutionalised and murdered by systems that neither recognise our humanity as First Nations people, nor as people with disabilities. In just over six months since our last submission to the CAT, we have been met with countless more examples of gross human rights violations, with no end in sight.

**We cannot afford to keep reporting on violence after it has occurred, and we cannot accept the loss of any more life.**

Every case study we have included in this submission represents the life of a First Nations person with disability irrevocably harmed and, in some circumstances, taken by a system that remains wedded to practices of cruelty and torture. As such, we assert the humanity of each First Nations person with disability referenced in this submission, and acknowledge the deep pain experienced by them, their kin, families and communities, whilst continuing to honour their ongoing struggles for justice.

It is imperative that urgent and critical action is taken immediately by all Australian governments to change the systems, laws and policies that allow these unconscionable human rights violations to continue, and that the international community continues to place appropriate pressure on the Australian State until this action is taken.

We thank the CAT for this opportunity to provide information regarding Australia's implementation of recommendations outlined in the present concluding observations released in December 2022, and reiterate our willingness to further discuss how we can move forward on these issues.

Please don't hesitate to contact Mali Hermans, Senior Policy Officer at [malih@fpdn.org.au](mailto:malih@fpdn.org.au) if you wish to discuss this submission.

Yours faithfully



Mr Damian Griffis  
Chief Executive Officer