

Submission

Royal Commission into violence abuse, neglect and exploitation
of people with a disability

February 2020

About the NHLF

The National Health Leadership Forum (NHLF) was established in 2011. The NHLF is a collective partnership of 12 national organisations who represent a united voice on Aboriginal and Torres Strait Islander health and wellbeing with expertise across service delivery, workforce, research, healing and mental health and social and emotional wellbeing.

The NHLF was instrumental in the formation of the Close the Gap Campaign and continues to lead the Campaign as the senior collective of Aboriginal and Torres Strait Islander health leadership. Committed to achieving health equality, we draw strength from cultural integrity, the evidence base and community.

The NHLF provides advice and direction to the Australian Government on the development and implementation of informed policy and program objectives that contribute to improved and equitable health and life outcomes, and the cultural wellbeing of Aboriginal and Torres Strait Islander people. Health is a noted human right, it is an underpinning to everyday life, and key factor in economic (and environmental) sustainability. Our vision is for the Australian health system to be free of racism and inequality and all Aboriginal and Torres Strait Islander people have access to health services that are effective, high quality, appropriate and affordable.

The NHLF Membership

- Australian Indigenous Doctors' Association
- Australian Indigenous Psychologists' Association
- Congress of Aboriginal and Torres Strait Islander Nurses and Midwives
- The Healing Foundation
- Indigenous Allied Health Australia
- Indigenous Dentists' Association of Australia
- The Lowitja Institute
- National Aboriginal and Torres Strait Islander Health Workers' Association
- National Aboriginal and Torres Strait Islander Leadership in Mental Health
- National Aboriginal Community Controlled Health Organisation
- National Association of Aboriginal and Torres Strait Islander Physiotherapists
- Torres Strait Regional Authority

INTRODUCTION

The NHLF welcomes the opportunity to respond to the Royal Commission into violence abuse, neglect and exploitation of people with a disability. This Inquiry will be critical in establishing what the government leadership and public policy should look like to provide true quality services for the best outcomes possible for Aboriginal and Torres Strait Islander people with a disability, indeed for disability services for all Australians.

This submission focuses on the public policy framework and Australia's culture of exclusion and privileging that has enabled the violence abuse, neglect and exploitation of people with a disability; and is provided in support of the First Peoples Disability Network (FPDN).

Response to the Terms of Reference

The statistics about Aboriginal and Torres Strait Islander people and disadvantage is quite clear: 45% of 15 years and over were living with disability or a restrictive long-term health condition in 2014-15. Disability was more prevalent among females than males (47% compared with 43%), however overall rates were similar in non-remote and remote areas (45% and 44%, respectively). The likelihood of disability increased with age, for example, in 2014-2015 the proportion of 15-24 year old Aboriginal and Torres Strait Islander people with disability was 32%, roughly half the rate for those aged 55 years and over (66%).^[1]

People with a profound or severe core activity limitation are at the high needs end of the disability spectrum; always or sometimes needing assistance with selfcare, mobility and/or communication. In 2014-15, one in thirteen (8%) Aboriginal and Torres Strait Islander people aged 15 years and over experienced profound or severe disability. Rates were similar for males and females and for people in non-remote and remote areas. Nationally, people with profound/severe disability accounted for one in six (17%) of all Aboriginal and Torres Strait Islander people with disability.^[1]

1. The disadvantage experienced by Aboriginal and Torres Strait Islander Australians is well known and generally not in dispute and led to the *Close the Gap Campaign* and later the Commonwealth Government's closing the gap strategy. Now in partnership with the Aboriginal Coalition of Peak organisations a new national agreement on closing the gap (refresh) is being developed. Despite this subsequent work to address disadvantage, the statistical overview presented above does not provide the true picture and prevalence of violence, abuse, neglect and exploitation that is experienced by Aboriginal and Torres Strait Islander peoples with a disability.

2. Australia's public policy framework is based on a western cultural identity that largely ignores the existence of cultures from Australia's First Peoples [2]. The ongoing process of colonisation, dispossession and cultural upheaval experienced by Aboriginal and Torres Strait Islander Australians continues today.
3. Aboriginal and Torres Strait Islander people have expressed repeatedly the need to eliminate institutional racism that obstructs their equal and equitable access to disability and community services, health care, economic opportunities, education and all other resources associated with self-determination and healthy sustainable outcomes. Institutional racism, multi-generational experiences of trauma and dislocation, social exclusion and neglect continue to have real impacts on the lives of many Aboriginal and Torres Strait Islander people [3].
4. The reframing of our social policy from one that is about providing a safety net to one that needs to be provided through competition, underplays the causes that lead people needing assistance [4]. The reforming of social policy is also linked to the reframing of who is deserving of assistance and who is not, which only exacerbates marginalisation [4]. The reform of social support system through mechanisms such as the NDIS has changed the focus to a market oriented service system [5] that largely ignores the intersection between housing and infrastructure, education and early childhood development, employment and income, law and justice, and public or social policy that either alleviates or exacerbates poverty and its impact on individuals and/or families social and economic participation /inclusion [4].
5. The life experience of Aboriginal and Torres Strait Islander peoples with disability is one that encompasses two forms of discrimination and social inequality resulting from being an Indigenous person and a person with a disability [2]. Aboriginal and Torres Strait Islander people are more likely than other Australians to experience various forms of disadvantage, including higher unemployment rates, poverty, isolation, trauma, discrimination, exposure to violence, trouble with the law and alcohol and substance abuse. For some people, this disadvantage is coupled with impairments that result in a disability [1].
6. The NHLF supports the issues identified by the First Peoples Disability Network (FPDN) as being key concerns for Aboriginal and Torre Strait Islander communities. The key issues are the continuing indefinite detention of people with disability in Australian prisons, which disproportionately impacts on Aboriginal people with a disability, and the continuing forced sterilisation of women and girls with a disability.

7. The use of incarceration for people with a disability, particularly people with cognitive impairment, who would otherwise not be in prison, is a form of abuse and neglect undertaken by the state [6, 7]. Australia has made no progress on addressing indefinite detention of people with a disability including cognitive impairment, nor have they addressed the practice of forced sterilisation since Australia first appeared before the UN Committee on the Rights of Persons with Disabilities in 2013 [8].
8. People with a disability who are incarcerated and not provided with support through the NDIS compounds this neglect. The incarceration and then exclusion from the NDIS are also inconsistent with Articles 12 and 13 of the UN Convention on the Rights of Persons with Disabilities to which Australia signed up to [8]. The National Disability Insurance Scheme (NDIS) itself cannot completely fulfil this need, however including people in prisons in its eligibility criteria would contribute to addressing the reasons for incarceration in the first place [9].
9. The NDIS and more broadly the Disability Policy Framework is worsening the already poor service provision to and for Aboriginal and Torres Strait Islander people with a disability. At least 60,000 Aboriginal and Torres Strait Islander people are potentially eligible for the NDIS, but the NDIA that oversees the NDIS refer to 20,000; with approximately 9000+ participating in the NDIS. Although being a participant may only mean they have been registered and assessed for services, but not necessarily have received any funding; and if they have received funding may not be able to spend, as there are no available services [2].
10. The implementation process of the NDIS particularly the ‘impairment assessment’ has effectively reduced the number of people that will receive support, compared to the previous arrangements under the National Disability Agreement. The harsh regime has been replicated for the application process for the Disability Support Pension. Both processes are maintaining the social and economic exclusion from the “mainstream” and has compounded an already problematic service system, which is perpetuating vulnerability to exploitation and abuse evidenced by the establishment of this Royal Commission and by the findings from the 2015 Senate Inquiry [10].
11. Due to the NDIS, State and Territory governments reduced their own investment in the disability sector and combined with the NDIS’ narrowly defined eligibility rules, there are many people who would have been receiving support previously who are now struggling to receive the same level of support or increase their support to meet their needs. Concurrent to the impact on individuals is the impact on service providers with the number facing a precarious financial future [11]. The foreseen benefit of a market orientated approach to provide social services are overstated and the negative consequences understated [12].
12. The provision of disability services to Aboriginal and Torres Strait Islander people with a disability, indeed to all people with a disability, should be in a manner consistent with the human

rights of self-determination and health, as outlined by the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR) both of which Australia has ratified [13].

13. Adhering to the International Conventions that Australia has agreed to, would go some way to addressing inequities; which is one of the objectives of the NDIS, as well as being a driver for change within the disability service sector as well as the employment, education, aged care, justice and health sectors that people with disabilities intersect with. It would also reaffirm that abuse, violence, neglect and exploitation is not acceptable nor tolerated within a civil society.
14. Systemic racism is a factor in the overrepresentation of Aboriginal and Torres Strait Islander people with a disability in our justice systems. Without addressing the systemic issue of racism within our society, we will not improve the social determinants of health which are key influences in why Aboriginal and Torres Strait Islander people with a cognitive impairment or disability, are in our criminal justice system and continue to be vulnerable to neglect and abuse within our society.
15. Truth-telling within our public administration is essential for our policy development processes and program implementation. The Disability Royal Commission will go some way to gathering the evidence to inform policy. However, ongoing evidence based decision making founded on community/public consultation with genuine openness and transparency is required. Co-design and shared decision-making processes between policy makers and people/ communities within the disability sector should be an outcome from this Royal Commission. Accordingly, we support the FPDN's call to let the people with disability/s to decide. We reaffirm the call for self-determination for the 45% of Aboriginal and Torres Strait Islander people with a disability to have a say about how they live their life including the supports they need.
16. Truth in the discourse around government expenditure which contributes to social gains and social capital within the disability sector is critical. The establishment of the role of Indigenous Commissioner within the Productivity Commission, is a critical element for truth telling within our public administration around expenditure on programs that impact Aboriginal and Torres Strait Islander people. A similar truth telling arrangement will be critical for transparency and co-design for policy and the solutions arising from this Royal Commission.
17. For Australia to uphold its value of a "fair go" it must work towards an equity model whereby the needs of the individual are met rather than treating everyone the same. The "needs" of Aboriginal and Torres Strait Islander people is to have an Australia that is culturally safe and respects the diversity and complexity of the many cultures that make up the nations of Australia's First Peoples. We want an Australia that acknowledges the right of Aboriginal and Torres Strait Islander people with a disability to self-determination.

18. The NHLF reiterates the call for action by the FPDN [14] to address the problems highlighted, prior to and during this Royal Commission. The FPDN action areas are:
- 18.1. Invest to create an Aboriginal Community Controlled Disability Services Sector for the provision of disability supports by Aboriginal and Torres Strait Islander people with a disability for their communities.
 - 18.2. Address the barriers facing Aboriginal and Torres Strait Islander people in accessing the National Disability Insurance Scheme (NDIS).
 - 18.3. Prioritise timely intervention to ensure supports and services are provided, and available over the long-term, and at the right time in people's lives.
 - 18.4. Recognise and value the existing knowledge, skills and expertise within Aboriginal and Torres Strait Islander communities. We are leaders in the inclusion of people with a disability.
 - 18.5. Resource a community directed research strategy which specifically focuses on Aboriginal and Torres Strait Islander disability.
 - 18.6. Endorse and support peer-to-peer leadership to ensure that Aboriginal and Torres Strait Islander people with a disability lead the engagement with community themselves.
 - 18.7. Develop and implement an access to justice strategy for Aboriginal and Torres Strait Islander people with a disability, particularly those with cognitive impairment, sensory and intellectual disability.
 - 18.8. Develop and implement programs for inclusive education and employment for Aboriginal and Torres Strait Islander people with a disability in line with national strategies for their full social participation.
 - 18.9. Create links between the National Disability Strategy and Closing the Gap Framework for coordinated policy and programs at the Commonwealth, State and local levels in partnership with Aboriginal and Torres Strait Islander people with a disability and their organisations.
 - 18.10. Develop an Aboriginal and Torres Strait Islander Disability Performance Framework for the independent monitoring of the social and economic outcomes of Aboriginal and Torres Strait Islander people with a disability.

19. Unfortunately, much of Australia's community services support systems are founded on models designed for high population, metropolitan settings that do not easily translate to rural, remote and especially Aboriginal and Torres Strait Islander community settings.

20. The lack of a public oversight mechanism to ensure transparency, fairness and equity is a key concern. The National Disability Agency compliance and risk management focus does not allay this concern, as it appears this compliance framework is about managing the expenditure of funds, rather than protecting the vulnerable. The lack of a disability workforce plan that would enable planned investment into growing and developing the workforce to ensure the existing workforce are appropriately skilled and have the capability to meet the needs of clients and be able to identify gaps been client needs and workforce provision.

21. To meet the needs of Aboriginal and Torres Strait Islander people with a disability and their communities, governments and other stakeholders need to fundamentally look at ways to develop locally based workforces (including the assistant workforce, providing ongoing therapy and assistance under direction of professionals are not in location and therefore may be available less frequently). This requires supporting education and training models that have been highlighted in various ways by many, within the disability sector and by the Aboriginal community-controlled health sector who are key service providers within communities providing services beyond health. In many remote and regional centres allied health services are rare, inadequate and sometimes non-existent. There needs to be investment to support training hubs outside of urban centres to provide education and career pathways for local people to work in allied health across the human services system such as disability, and aged care.

22. Training and education provide employment opportunities and would assist in cross sector alignment and support, particularly in areas where there are either a single or limited number of services, and where the current costs associated with servicing may be extremely expensive, but deliver limited impact to the community. Investing in an Aboriginal community-controlled disability sector would go some way into addressing the training and education needs, service gaps within rural and remote communities and culturally unsafe services within the disability sector.

23. Ultimately, to address the systemic issues that will inevitably be demonstrated in this Royal Commission, there needs to be a partnership approach in the design of the solutions. Whilst this will be easier within the disability support sector itself, addressing the systemic issues within the broader community/mainstream will be harder, and will require all levels of government to be at the forefront of reform. There needs to be a genuine approach through the Council of Australian Governments:

- 23.1. To invest in training our sectoral workforces to be safe and respectful with people with a disability and secondly to be culturally safe and responsive when working with Aboriginal and Torres Strait Islander people with a disability.
 - 23.2. To invest in growing the Aboriginal and Torres Strait Islander workforces across the social determinants such as health, education and disability to empower Aboriginal and Torres Strait Islander people with a disability to achieve their goals, good health and wellbeing.
 - 23.3. There also needs to be bipartisan commitment to address the chronic gaps in infrastructure, health care delivery and housing, otherwise the NDIS scheme can't deliver on its objectives for Aboriginal and Torres Strait Islander people living in isolated communities.
24. Changing the marginal position in society of Aboriginal and Torres Strait Islander peoples will need an approach that takes in the whole of life, starting with women of childbearing age, focussing on the care of infants and young children and proceeding through the life course. The colonial legacy of systemic abuse and dispossession has led to complex intergenerational trauma. This means that Aboriginal and Torres Strait Islander Peoples do not begin with an equal opportunity to be as healthy as other Australians [15].
25. The safety of people with a disability should be a key underpinning of any resolutions to the issues raised in this Royal Commission and be an underpinning of the NDIS Framework. Ensuring public safety is the underpinning of the National Regulation and Accreditation Scheme for health professions, a national accountability scheme is a necessity for the disability sector. Similarly, the 2015 Senate Inquiry, covered this issue and recommend a national system to provide independent oversight to investigate and eliminate violence, abuse and neglect of people with a disability. That Report also recommended the need for justice covering advocacy, support, and prevention and interventions, as well as the regulation of the workforce and the training of the workforce.
26. In regard to the solutions, as previously mentioned, the NHLF supports the First Peoples Disability Network's call for a whole-of-community approach that incorporates peer to peer leadership, education and employment programs and recognises and values the existing skills, knowledges and experiences of people within the disability network. This approach would enable self-determination for people with disabilities [14].

27. Finally, the NHLF calls for the

- 27.1. First Peoples Disability Network's 10 action areas be adopted and implemented; that all Australian Governments adhere to the U.N. Convention on the Rights of Persons with a Disabilities,
- 27.2. implementation of all Recommendations from the 2015 Senate Community Affairs References Committee Inquiry into Violence, Abuse and Neglect Against People with Disability in Institutional and Residential Settings, and
- 27.3. for a genuine disability workforce plan that includes education and training support in rural and remote locations is developed and supported by investment from all tiers of government.

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