



NATSILS

National Aboriginal and
Torres Strait Islander Legal Services

TRUE JUSTICE FOR OUR PEOPLE

Black Lives Matter: always have, always will

We are NATSILS, the National Aboriginal and Torres Strait Islander Legal Services. We represent Aboriginal and Torres Strait Islander Legal Services (ATSILS) around the country. We are proud to be owned and operated by our people and for our people.

Over the past month we have watched what has happened in the United States with great sadness and we express our continuing, staunch solidarity with the global Black Lives Matter movement.

While some have tried to distance Australia from what's happening in the United States in an attempt to shut down the truth about the real and ongoing impacts of colonisation, we have also seen Australia's history of slavery and stolen wages, and the deaths of our people in police or prison custody brought to the forefront of this discussion.

We must continue these conversations. We must call on Australian Governments to act immediately to end these ongoing injustices for our people. If this is going to be a pivotal moment in our history, we need to go beyond the empty gestures of the past.

Our work is grounded in the incredible strength of our cultures, the resilience of our communities, human rights, self-determination, healing, and on truth-telling. This is how we achieve true justice.

The devastating effects of colonisation, family separation and racism, have pushed our people to be the most imprisoned people on earth which means we're also more likely to die in police or prison custody. Our women are the fastest-growing prison population, and almost all of our imprisoned women are themselves victims of violence.

Next year it will be 30 years since the Royal Commission into Aboriginal Deaths in Custody handed down its findings. The Royal Commission was meant to put an end to Black deaths in custody but the Commission's findings are still gathering dust, and 437 of our people have died in police or prison cells since. That means that on average one Aboriginal or Torres Strait Islander person has died in police or prison custody every three weeks for 29 years and hundreds of families would not be left behind in grief and agony.

If governments had implemented the Royal Commission's recommendations 437 Aboriginal and Torres Strait Islander people may still be alive.

Not one officer or agency has been held criminally liable for any of our 437 deaths in custody since the Royal Commission. Many of these deaths are the result of our over-imprisonment and over-policing. Many are the result of individuals and agencies have done wrong and all should be held to account. We have been told by politicians, bureaucrats, and other decision-makers to wait for change, that justice and progress takes time, but how much more time must we wait?

NATSILS and the ATSILS are experts on the delivery of effective and culturally responsive legal assistance to our people. We have a unique insight into legal, justice, and social policy issues affecting our people and our communities.

Now that the world is watching like never before, we have compiled these legal and policy reforms that need to be implemented to advance the cause of true justice in Australia.

We share these based on our combined decades of experience in providing legal advice, assistance, representation, education, advocacy, law reform and through-care to our people.

However, we recognise that any justice reform must involve the families whose loved ones have died in custody. This statement is intended to be a living document as we continue to consult and do the work with these families during such difficult times. Nothing in this document is intended to replace or override their own calls for justice.

Our people demand that the Royal Commission into Aboriginal Deaths in Custody's recommendations not be ignored

1. All governments, jurisdictions and legal systems need to listen to the families whose loved ones have died in police or prison custody and meaningfully and respectfully involve them in all relevant policy and legal reforms while remunerating them for their labour. The families' voices must be centred in all reforms and changes that aim to end Black deaths in custody.
2. All governments need to urgently implement all of the recommendations from the *Royal Commission into Aboriginal Deaths in Custody*, the Australian Law Reform Commission's *Pathways to Justice Inquiry*, the *Royal Commission into the Protection and Detention of Children in the Northern Territory* and the many deaths in custody coronial investigation recommendations, and publicly report on their progress with monitoring and public oversight by our people and our organisations.

For our people, the police's role as first responders is often not helpful, but harmful or even fatal. For true justice, we must hold police, prisons, and authorities accountable.

3. All governments need to hold police, prisons, medical officers, and others accountable through criminal and civil processes for all future and historic black deaths in custody. This includes the immediate referral to the respective Department of Public Prosecutions for criminal charges in all cases where there is sufficient evidence as well as providing adequate compensation to victims where appropriate.
4. As recommended by the Royal Commission, we demand an independent oversight body for all state, territory, and federal police and prison complaints, this needs to include complaints against corporate prisons and contractors. This body needs to be properly resourced, report directly to parliament, and have sufficient powers to refer matters for criminal investigation. The current system of police investigating themselves when complaints are made against them is fundamentally flawed.
5. All governments need to urgently prioritise the reallocation of public funding away from ineffective, punitive policies or on the expansion of prisons, particularly for-profit prisons and instead focus on strengthening and improving our communities with Aboriginal and Torres Strait

Islander led solutions. We need more excellent schools, community healthcare, and healing programs by and for our people.

6. All governments and police services need to end racist and discriminatory policing as well as ending systemic and institutionalised racism. This includes the implementation of receipting practises for police conducting stops and searches nationwide to prevent racial profiling by police services. Police services must make this disaggregated data publicly available. We also need data sovereignty, asserting our own interests over our own data for our purposes, so that we can have oversight of the policy and legislative frameworks that affect our lives.
7. Police services need to allow all of our people access to Custody Notification Services, without exception or delay. These services must be fully publicly funded and resourced and it must be mandatory for police to immediately notify ATSILS when an Aboriginal or Torres Strait Islander person is in custody for any reason, including protective custody.

A handful of decision makers are blocking our self-determination by denying our communities and organisations the urgent public funding and resourcing they need and by not removing discriminatory laws and policies that disproportionately punish us.

8. As a signatory to the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**), the Australian Government, including all states and territories need to implement the UNDRIP into our domestic laws and policies.
9. The Commonwealth and the states and territories must set ambitious adult and youth justice targets to end our over imprisonment. We are asking for a justice target to end the over-representation of Aboriginal and Torres Strait Islander youth (10-17 years) and adults on community-based orders, in police custody and in prison within 10 years. We also call for ambitious targets on family violence, child protection, disability and housing.
10. All governments need to fully resource and support Aboriginal and Torres Strait Islander Legal Services, Family Violence Prevention Legal Services, and other Aboriginal community controlled organisations and programs to meet the unmet legal, health, social, and cultural needs of our people. This also includes:
 - a. Fully resourcing and funding ATSILS to run coronial inquests to ensure that our people receive culturally safe, timely, and fair legal assistance before, during, and after all coronial processes.
 - b. Expediting coronial investigations for all Black deaths in custody, our people are waiting too long for answers and accountability after their loved ones have died in custody.
11. State and territory governments need to work with NATSILS and ATSILS and other relevant Aboriginal and Torres Strait Islander organisations to make remand and bail laws fair, including:
 - a. Creating a legislative presumption in favour of bail for all offences, except in circumstances where there is a specific and immediate risk to the physical safety of another person.
 - b. Developing guidelines on the application of bail provisions requiring bail authorities to consider any issues that arise due to a person's Aboriginality.
 - c. Identifying gaps in the provision of culturally appropriate bail support programs and diversion options.

- d. Fully resourcing and funding ATSILS, community justice panels and interpreter services to research relevant matters relating to an Aboriginal and Torres Strait Islander person's identity to submit to the court.

We won't accept our women, our young people, and our people with disability being blocked from getting the care and healing they need.

12. All governments need to prioritise the early screening for, and the timely support for, disability for our children, particularly Foetal Alcohol Spectrum Disorders and hearing loss. All governments need to ensure that all of our people entering imprisonment are also screened for disability and receive all of the culturally safe support and assistance they require.
13. All governments across Australia need to commit to raising the age of criminal responsibility to at least 14 years of age with no exceptions for any type of offending as well as implement a minimum age of detention of 16 years. All governments need to end the criminalisation of our children and young people in out of home care and child protection, and provide numerous, culturally appropriate diversion programs and other alternatives to imprisonment.
14. All jurisdictions that allow for people to be imprisoned after a finding of unfitness to plead or to stand trial, or by verdict of not guilty due to mental impairment need to impose effective limits on the total period of imprisonment that person can be subject to as well as mandating a rehabilitation plan developed by appropriately qualified professionals that facilitates their return to the community.

We need alternatives to prison, culturally safe ways of healing and recovery and accountability.

15. All Australian governments and in partnership with our people and our organisations must urgently implement decarceration strategies including:
 - a. Ending the imprisonment of our people, including children, who have not been sentenced for a crime.
 - b. Ensuring that our communities have easy access to income support- including keeping the higher rate of JobSeeker, providing appropriate healthcare and prioritising the provision of affordable basics like medications and nutritious food in rural and remote areas.
 - c. Ending homelessness in Australia by 2030 by building public and social homes and by upgrading and maintaining existing homes.
 - d. Strengthening justice reinvestment programs and place-based interventions by prioritising public spending on communities and culturally safe support services that are strong in our culture and led by our Elders instead of more policing and prisons.
 - e. Increasing culturally safe diversion programs, including Aboriginal community-controlled programs for young people, and other alternatives to imprisonment.
 - f. Increased funding and support for Aboriginal and Torres Strait Islander community-led prevention and early intervention efforts to reduce violence against our women and offending by our women.
 - g. Ending the unsafe and inappropriate removal of our children and the full implementation of the Aboriginal Child Placement Principles in all states and territories, including taking a community-centred, family inclusive approach to child protection concerns to ensure our children are culturally, physically and emotionally safe.

16. Repealing low level offences that are discriminatorily used to target and over-police our people and contributes to our mass imprisonment and sometimes our death, like public drunkenness offences, any imprisonment for unpaid fines, begging and vagrancy offences and mandatory sentencing.
17. All governments need to ensure that conditions in prisons are independently monitored and comply with our domestic and international human rights obligations like the Optional Protocol Against Torture, and that imprisoned children in particular are not denied an education or educational materials during their imprisonment.
18. All governments need to urgently designate and/or establish National Preventive Mechanisms (**NPM**) to oversee the conditions of detention and treatment of people in places of detention, which must, at a minimum, comply with international human rights standards. Governments need to engage with civil society, including our organisations, in transparent, inclusive and robust consultations as they are established and operationalised. NPMs need to ensure that their operations, policies, frameworks and governance are always culturally appropriate and safe for our people. NPMs need to also ensure their findings are publicly available and published in different formats and languages, including our languages.
19. All governments need to prohibit the use of solitary confinement, spithoods and restraints, and other practices that amount to torture or cruel, inhuman or degrading treatment or punishment, including isolation and quarantine measures that amount to effective solitary confinement, in all adult and children's prisons.
20. All governments need to commit to fully funding and resourcing the culturally safe throughcare programs and support services run by ATSILS. This will ensure our people are fully supported when they are transitioning from imprisonment into the community.

Public momentum is gathering, the world is watching like never before.

As an Aboriginal Community Controlled Organisation, we will continue advocating with and for our people for justice that focuses on our solutions, grounded in our cultures and strong in truth telling and accountability.

Black lives matter.

**NATSILS
July 2020**