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# NATSILS

National Aboriginal and  
Torres Strait Islander Legal Services

TRUE JUSTICE FOR OUR PEOPLE

***Submission to the Review of the Disability  
Discrimination Act***



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## Introduction

National Aboriginal and Torres Strait Islander Legal Services (**NATSILS**) thanks the Attorney General's Department (**AGD**) for the opportunity to make a submission on this important issue.

NATSILS represents and is the national voice of community-controlled Aboriginal and Torres Strait Islander Legal Services (**ATSILS**). We advocate at the national level for the rights of Aboriginal and Torres Strait Islander peoples within the justice system and work to ensure that our peoples have equitable access to justice.

NATSILS' submission is endorsed by its members which include:

- Aboriginal Legal Service (NSW/ACT) Limited (ALS NSW/ACT)
- Aboriginal and Torres Strait Islander Legal Service Queensland (ATSILS QLD)
- Aboriginal Legal Rights Movement South Australia (ALRM SA)
- Aboriginal Legal Service Western Australia (ALSWA)
- North Australian Aboriginal Justice Agency (NAAJA)
- Tasmanian Aboriginal Legal Service (TALS)
- Victorian Aboriginal Legal Service (VALS)

## Scope of NATSILS' submission

NATSILS' submission is informed by the collective experience representing Aboriginal and Torres Strait Islander people across Australia.

Due to current capacity challenges, this brief submission is limited in scope and draws on our members' experience and expertise representing Aboriginal and Torres Strait Islander adults and children, as well as our advocacy and law reform expertise across areas that directly impact on the criminalisation of Aboriginal and Torres Strait Islander people.

NATSILS supports the recommendations made by our member ATSILS in separate submissions provided to this Review. This submission is supplementary to those submissions and should be read in conjunction with those submissions.

## The hidden national crisis

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (**Disability Royal Commission**) analysis of criminal justice and people with disability established that people with disability are significantly over-represented at all stages of the criminal justice process in Australia. It further established the Aboriginal and Torres Strait Islander people are disproportionately represented in adult prisons and youth detention when compared with non-Indigenous Australians.

The Disability Royal Commission found that proportion of Aboriginal and Torres Strait Islander people with cognitive disability in custody, particularly youth detention is a "**hidden national crisis**".<sup>1</sup>

NATSILS and ATSILSs are not surprised about this finding and agree that there is a need for care and support from Aboriginal Community Controlled organisations (ACCOS) to prevent people with disability from entering the criminal justice system in the first place.

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<sup>1</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final Report: Volume 9, (2023), 139.



## Intersection of racism and disability discrimination

The experiences of discrimination and inequity are intersectional, and Aboriginal and Torres Strait Islander people are subject to disproportionate and harmful discrimination on the basis of race as well as disability in both the criminal and care systems. System biases against Aboriginal and Torres Strait Islander people are present in the way they are treated at every point across the legal system, and in particular in interactions with police.<sup>2</sup>

The role of racism in policing was again recently highlighted in evidence before the Yoorook Justice Commission, where the Police Commissioner of Police in Victoria, Shane Patton, apologized to Aboriginal and Torres Strait Islander people in the following terms:

*“As a result of systemic racism, racist attitudes and discriminatory actions of police have gone undetected, unchecked, unpunished or without appropriate sanctions, and have caused significant harm across generations of Aboriginal families.”*

The combined and cumulative relationship between racially biased policing and the prevalence of Aboriginal and Torres Strait Islander people in the criminal justice systems with disability, clearly mitigates toward the need to include a positive duty not to discriminate to Police. Given the well-documented and increasing over-representation of Aboriginal and Torres Strait Islander adults and children in prison, the positive duty should be extended to all adult corrections and youth detention officers – in custodial and community corrections settings.

Aboriginal and Torres Strait Islander children with disability in the out of home care system are also over-represented in the youth and adult criminal justice systems,<sup>3</sup> with deep impacts on families and communities. Our members regularly work with families and children with disability who are criminalised through the child protection systems.

Acknowledging the over-representation and intersectionality of children with disability in out of home care, NATSILS recommends that the positive duty to not discriminate should also be specifically extended to include powers and duties of child protection authorities and out of home care agencies. This is consistent with the recommendations of the Yoorook for Justice Report that recommended amendments to the *Victorian Equal Opportunity Act 2010* (Vic) “to prohibit race and other forms of discrimination in the administration of State laws and programs, including all functions performed by Victoria Police, Corrections Victoria and child” protection authorities”.<sup>4</sup>

## Investment in ACCOs to support Aboriginal and Torres Strait Islander people with disability

The Disability Royal Commission recommended that ACCOs should be funded to provide culturally appropriate disability service to Aboriginal and Torres Strait Islander people. It found that when a person is identified as First Nations in criminal justice settings, any support needs associated with disability tend to become less of a priority and that this may be exacerbated by limited access to advocacy and legal services with disability expertise.

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<sup>2</sup> See, for example, Tamar Hopkins (2021) *Litigating Racial Profiling: Examining the evidence for Institutional Racism by Victoria Police*, *Australian Journal for Human Rights*.

<sup>3</sup> See, for example, Felicity Stewart, (2019) ‘*Crossover Kids: Vulnerable Children in the Youth Justice System Report 1*’ Sentencing Advisory Council (SAC); Susan Baidawi and Rubini Ball, ‘Multi-system factors impacting youth justice involvement of children in residential out of home care,’ (2022) 28(1) *Child and Family Social Work* 53

<sup>4</sup> See Yoorook for Justice Report, Recommendation 29 at <https://cdn.craft.cloud/06ad3276-b3d9-4912-bcbb-37795aade9a8/assets/documents/Yoorook-for-justice-report.pdf>



The recommendation to better resource ACCOs is aligned with government commitments under the National Agreement on Closing the Gap, which

*“acknowledge that Aboriginal and Torres Strait Islander community-controlled services are better for Aboriginal and Torres Strait Islander people, achieve better results, employ more Aboriginal and Torres Strait Islander people and are often preferred over mainstream services.”<sup>5</sup>*

## Other sources from which we draw our recommendations

In providing this brief submission, NATSILS additionally refers the Attorney-General Department’s *Disability Discrimination Act* Review team to, and relies on:

- Information provided to the AGD Review team through direct consultation with our member ATSILS at a consultation held online on 21 November 2025.
- The Network for Disability Law Reform Joint Statement: *Time for a Stronger Disability Discrimination Act (Joint Statement)* at <https://nationallegalaid.org.au/news/dda-reforms>, endorsed by NATSILS.
- NATSILS’ Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability (the Disability Royal Commission) at <https://www.natsils.org.au/wp-content/uploads/2020/12/7-May-2020-NATSILS-Submission-to-the-DRC-Legal-System-Issues-Paper-a036.pdf>
- the findings in the Final Report of the Disability Royal Commission, in particular *Report 8 Criminal justice and people with disability* and *Report 9 First Nations people with Disability* at <https://disability.royalcommission.gov.au/publications/final-report>
- NATSILS submission to the Review of the National Legal Assistance Partnership, and recommendations relating to self-determined and holistic and intersectional service delivery for our clients with disability. <https://www.natsils.org.au/wp-content/uploads/2024/04/NATSILS-Submission-to-the-NLAP-Review-Final-EDIT-public.pdf>

NATSILS additionally refers the *Disability Discrimination Act* Review team to the following sources relevant to this Review:

- [Yoorrook for Justice Report](#), and in particular discussion on the prevalence of Aboriginal and Torres Strait Islander adults and children with disability in the justice and child protection systems.
- The [under-representation of Aboriginal and Torres Strait Islander people with disability as NDIS participants](#) and barriers accessing the NDIS and NDIS appeals processes.

## Recommendations

1. NATSILS agrees that the *Disability Discrimination Act* should be amended to introduce an enforceable positive duty on all duty-holders to eliminate disability discrimination. NATSILS supports Aboriginal Legal Service Western Australia (ALSWA) recommendation that protections under the *Disability Discrimination Act* should not be confined to discrimination solely involving a “service” but it must cover discrimination experienced during all interactions with all employees of public authorities performing the powers and duties and functions of their office.

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<sup>5</sup> See National Agreement on Closing the Gap, clause 43 at <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap/6-priority-reform-areas/two>



2. NATSILS supports recommendation 8.19 from the Report of the Disability Royal Commission that the *Disability Discrimination Act* should be amended to explicitly include services provided by police. NATSILS submits there should be no exclusions or carve-outs to this inclusion. NATSILS recommends this protection against discrimination be specifically extended to corrections, youth detention and child protection officeholders.
3. As set out in the **Joint Statement**, Government should partner with and fund Aboriginal and Torres Strait Islander community-controlled organisations (ACCOS) to ensure reforms centre culture, community control and on-Country accessibility, and commit funding for ACCOs to provide legal assistance for Aboriginal and Torres Strait Islander people with disability to access civil justice remedies including for disability discrimination.
  - a. Any changes to *Disability Discrimination Act* should be complemented by investment in NATSILS to enhance our intersectional practices and provide early intervention and wrap-around, prevention, diversion, rehabilitation, through-care and therapeutic support for Aboriginal and Torres Strait Islander people with disability, including specific resourcing for disability discrimination matters, as well as National Disability Insurance Scheme (NDIS) appeals.
4. Recognising the significant number of Aboriginal and Torres Strait Islander people with disability in justice systems, the Commonwealth, State and Territory governments work in partnership with NATSILS, ATSILSs and the First Peoples Disability Network to develop an Aboriginal and Torres Strait Islander Disability Framework and operational plan which would co-locate disability advocates within NATSILS, ATSILSs and First People's Disability Network.
5. Any changes to *Disability Discrimination Act* should be complemented by additional resourcing to the Australian Human Rights Commission to enable it to undertake education activities and exercise enforcement powers.
6. Reforms to the *Disability Discrimination Act* should expressly recognise intersectional and compounding racial and disability discrimination experienced by Aboriginal and Torres Strait Islander people.
7. Noting the link between school disciplinary actions, school exclusion and criminalisation of children, the *Disability Discrimination Act* should include provisions that protect the rights of children with disabilities to learn and participate in education.
8. NATSILS submits that this Review provides an opportunity to reconsider the role of police as first responders in call outs where disability issues are in play, and that alternative responder models that provide therapeutic support and lower incarceration on remand be explored as an alternative. NATSILS notes that this was a recommendation to the recent [Bail and Remand Reform Report](#) to the Standing Council of Attorneys-General and would make an impact on socio-economic targets 10 and 11 and Government commitments under the National Agreement on Closing the Gap.