

[Home](#) / [News](#) / [Speeches](#) / Mental illness and cognitive disability in Aboriginal and Torres Strait Islander prisoners – a human rights approach (2012)

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Speeches



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Thursday 23 August 2012

Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner

Mental illness and cognitive disability in Aboriginal and Torres Strait Islander prisoners – a human rights approach

Mick Gooda

Aboriginal and Torres Strait Islander Social Justice Commissioner

Australian Human Rights Commission

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Introduction

I would like to begin by acknowledging the Gimuy Walubara Yidinji people of the Cairns region on whose land we gather today. I pay my respects to their Elders past and present.

I am a Gangulu person from the Dawson Valley in Central Queensland and when I speak to my Elders, they ask me to pass on my salutations to the Traditional Owners of the land I visit.

And thank you also for inviting me to talk at this conference.

There are a number of things I could have talked about today under the heading 'recovering citizenship'. Indeed, perhaps all the human rights issues of Aboriginal and Torres Strait Islander people could potentially fit here.

For the last couple of years, I have been working on the recognition of Aboriginal and Torres Strait Islander people in our nation's Constitution. That topic is clearly relevant to the concept of citizenship.

I have also been working on the Stronger Futures legislation, the latest iteration of the Northern Territory Intervention. Concerns that the rights of the people in the Aboriginal communities affected could also be discussed under a heading of 'recovering citizenship'.

And my last Social Justice Report focused on lateral violence within Aboriginal and Torres Strait Islander communities. This is a spectrum of behaviours from gossiping to bullying to physical violence, which results from the disempowerment and marginalisation we have suffered as Aboriginal and Torres Strait Islander peoples. It is committed by our people against our people and is hugely destructive. The reasons for lateral violence, the need to address it and the tools for doing so also fit nicely into a ‘recovering citizenship’ theme.

But, I’m going to talk primarily about the very serious human rights concerns I have regarding Aboriginal and Torres Strait Islander people with cognitive impairments and mental illness in the criminal justice system. It is a topic that Disability Discrimination Commissioner, Graeme Innes, and I are both particularly alarmed by.

Mental illness and cognitive impairment are obviously different issues.

A mental illness is a condition that “severely impairs (temporarily or permanently) the mental functioning of the person” and is characterised by the presence of symptoms such as “delusions, hallucinations, serious disorder of thought, a severe disorder of mood, and sustained or repeated irrational behaviour.”^[1]

When I use the term ‘cognitive impairment’ I use it in a broad way to include a “range of disorders relating to mental processes of knowing, including awareness, attention, memory, perception, reasoning and judgement. It can include intellectual disabilities, learning disabilities, acquired brain injury, foetal alcohol spectrum disorders, dementia, neurological disorders and autism spectrum disorders.”^[2]

Although they are different, mental illness and cognitive impairment have several things in common, particularly in relation to how they interact with the criminal justice system. For example:

- The data on the prevalence of mental illness and cognitive impairment in the criminal justice system is not comprehensive, particularly as it relates to Aboriginal and Torres Strait Islander people. We noted in our 2008 Report on Aboriginal and Torres Strait Islander young people with cognitive disabilities and mental health in the criminal justice system that few criminal justice agencies formally collect disability data on a regular basis.^[3]
- However, the data we do have suggests that people with mental illness and cognitive impairment are overrepresented in the criminal justice system.^[4]
- And in terms of the impact of early interventions and diversions from the criminal justice system, the impact on people with mental illness and people with cognitive impairment is similar.^[5]

It is also worth noting that many prisoners are both cognitively impaired and have mental illness.^[6]

Some introductory remarks

Firstly, I’m sure I don’t need to tell you about the lack of data we have in this area.

It is difficult to get full breakdowns of the kind of statistics needed to properly address the issues, in particular, the breakdown of the health status of each jurisdiction’s Aboriginal and Torres Strait Islander detention population, compared with the non-Indigenous detention population and the outside community, Aboriginal and Torres Strait Islander and non-Indigenous.

But we do have a lot of anecdotal evidence and there is enough research, especially around mental illness, to put together a picture – and as many of you here would know well, it ain’t pretty!

We know that Aboriginal and Torres Strait Islander people are dramatically overrepresented in the criminal justice system,^[7] especially our young people.^[8]

It seems that Aboriginal and Torres Strait Islander prisoners are more likely than non-indigenous prisoners to experience:

- mental health problems,^[9]
- substance use problems,^[10]
- hearing loss,^[11] and
- ill health.

Experts have identified the high incidence of mental health issues in the broader Aboriginal and Torres Strait Islander community compared with non-Indigenous Australians.^[12]

But it doesn't take a qualified medical professional to know that Aboriginal and Torres Strait Islander people might struggle to deal with the myriad issues we face as individuals and as communities, and that's without being incarcerated.

I'll list a few:

- The intergenerational impacts of the loss of country, culture and language, and policies relating to the stolen generations;
- The continuing discrimination from significant sections of non-Indigenous Australia, including systemic discrimination in access to services, education, employment etc.;
- The health problems which our families and friends battle daily – diabetes, heart disease, kidney disease, liver disease;
- The deaths of our family and friends at such young ages, including soaring rates of suicide in some of our communities;
- The added caring responsibilities on many of our elders, especially women;
- The disproportionate police surveillance and criminalisation; and
- The lateral violence within our communities, itself a result of marginalisation and disempowerment.

Some of the results of our communities struggling to deal with the complex issues we face include high rates of substance abuse.

While Aboriginal and Torres Strait Islander communities have more teetotallers than non-Indigenous Australia, we know that there are some very serious alcohol and substance abuse problems in Aboriginal and Torres Strait Islander communities. This has resulted in some serious health problems for communities to deal with.

For example, Foetal Alcohol Spectrum Disorders (FASD) is 'an overarching term used to describe a range of cognitive physical, mental, behavioural, learning and developmental disorders'^[13] that result from foetal exposure to alcohol. The research is not comprehensive, but there is some research suggesting the prevalence of FASD is higher in Aboriginal and Torres Strait Islander people across Australia than in other Australians.^[14] I certainly know that some of our communities are very concerned about the number of people who have FASD.^[15]

The term 'acquired brain injury' includes any type of brain damage that occurs after birth. It can include damage sustained by infection, disease, lack of oxygen, a blow to the head or substance abuse. It is unsurprising that with the rates of substance abuse in some Aboriginal and Torres Strait Islander communities there is significant concern at the potential number of Aboriginal and Torres Strait Islander people with acquired brain injury.

Cognitive impairment

It is the issue of Aboriginal and Torres Strait Islander people with cognitive impairment in the criminal justice system that I want to focus on today.

This is perhaps the most under-researched area of those I've mentioned.

In 2005 and again in 2008, the Australian Human Rights Commission looked into this issue. We found that there were many people on the ground aware of this problem and working hard to help the people affected. But that Aboriginal and Torres Strait Islander people with cognitive disabilities tend to be 'forgotten' in the literature, in policy and arguably in practice. We recommended further research be undertaken, including on the development of culturally appropriate assessments of cognitive functioning and mental health issues.^[16]

There has been some research though.^[17] That existing research suggests there are higher rates of cognitive impairment in Aboriginal and Torres Strait Islander young people than in other young Australians.^[18] And also that there are high rates of cognitive impairment in Aboriginal and Torres Strait Islander prisoners.^[19]

However, the research is not comprehensive. It has been mainly state-based to date, so we do not have national data.

Currently, the Aboriginal Disability Justice Campaign (ADJC) is doing some much needed research.

The ADJC research is finding, again, that Aboriginal people with cognitive impairment are over-represented in criminal justice settings across Australia but that it is proving difficult to quantify the exact numbers for predictable reasons:

- cognitive impairments are often not diagnosed; this is likely to be the case particularly for Aboriginal and Torres Strait

Islander people who are less likely to identify as disabled and have less access to services, especially in remote communities; and

- Not all Australian jurisdictions collect the relevant data – some appear to have no data on cognitive impairment at all.

The ADJC states that:

“People with cognitive impairment (compared to the non-disabled population):

- Are more likely to come to the attention of police; are more likely to be charged; and are more likely to be imprisoned.
- They spend longer in custody than people without cognitive impairment; have far fewer opportunities in terms of program pathways when incarcerated; are less likely to be granted parole; and have substantially fewer options in terms of access to programs and treatments – including drug and alcohol support – both in prison, and in the community when released.”

ADJC lists three areas that require ongoing examination:

1. The impact of existing legislation on Aboriginal people with cognitive impairment.
2. The way in which Aboriginal people with cognitive impairment interact at various points with the criminal justice system (and then the ways the criminal justice system interacts with the mental health system).
3. The way in which the service systems outside of the criminal justice system are able to meet the needs of this population.

In recent months, the legislative frameworks in some Australian jurisdictions, have been shown to operate in such a way that people with cognitive impairment are detained indefinitely.

Generally, the indefinite detention occurs in prisons in Western Australia and the Northern Territory and in psychiatric hospitals in Queensland and Tasmania.

Each jurisdiction is different, but there are some common features in the stories of individuals with cognitive impairments who are detained indefinitely:

- In summary: a person is found unfit to plead or not guilty by reason of their impairment; an assessment determines they are a risk to themselves or the community; the court makes a ‘supervision’ or ‘custodial’ order; there is no other suitable facility and so the person is put in prison.
- ‘Supervision orders’ in the jurisdictions where indefinite detention is possible do not have a time limit. Courts reviewing the detention have little choice but to continue the detention because of the lack of alternatives, meaning people with cognitive impairments in jurisdictions without time limits on ‘supervision orders’ spend a long time in prison.
- ADJC are finding that legal professionals in all states and territories where indefinite detention is possible face an ethical dilemma. Many lawyers choose not to disclose their clients disability because of the likelihood of indefinite detention resulting. This impacts the data too.
- Most of the legislative frameworks tend to conflate mental illness and cognitive impairment. But, unlike people with mental illness, people with cognitive impairment are not able to be ‘treated’ for their condition. This means, that when they are reviewed, there is usually very little change in their risk assessment.
- Indefinite detention invariably results in a deterioration of people’s behaviour and skills over time.

I think personal stories best illustrate how significant a breach of human rights this situation really is.

Marlon Noble’s case in WA brought attention to this issue late last year.

Mr Noble was accused of sexual assault in 2001 but was deemed unfit to plead in 2003 because of his cognitive impairment. He was subsequently imprisoned for ten years without conviction or even trial.

The Director of Public Prosecutions reportedly said that if Mr Noble had been found guilty he would likely have spent less time in prison.

Mr Noble was released in January 2012 under strict conditions, the breach of which would likely see him locked up again. The restrictions include: a complete alcohol ban and ban on attending licensed premises, including restaurants;

he must submit to random alcohol and drug testing; he is included on the child sex registry; and he must stay in the same residence every night. The restrictions prevent Mr Noble from visiting the grave of his mother, who was murdered whilst he was imprisoned.

The Criminal Law (Mentally Impaired Accused) Act 1996 (WA), which allowed Mr Noble's incarceration, provides for the declaration of places, such as mental health institutions, to house people in circumstances like Mr Noble's. But no such places had been 'declared'.

Mr Noble was therefore incarcerated in the same facilities as the general prison population.

In June, Lateline revealed the stories of 23-year-old Kerry Mandaway Doolan and 31-year-old Christopher Leo, both Aboriginal men from the Northern Territory.^[20] Both are thought to have been born with foetal alcohol spectrum disorder (FASD).

Kerry Doolan was charged with assault after allegedly threatening his carer, but was found unfit to plead. He's been in prison for four years.

Christopher Leo reportedly assaulted a woman in 2007, but was also unfit to plead. He's been in prison for nearly five years.

Two years after Christopher Leo went to jail, Justice Brian Martin conducted a review hearing in 2009. He expressed deep concern that had Christopher Leo been able to plead, he would have only received a 12-month sentence for the assault.

The mental health of both men has deteriorated significantly as a result of their time in prison and the fact they don't know when they can leave.

Sadly, I have been told of many similar cases:

A young Aboriginal man with a cognitive impairment in Queensland has been imprisoned for 21 years in a psychiatric institution (without ever having been found guilty because he was unfit to plead).

Had he been convicted of the original offence, it is unlikely he would have been sentenced to more than six months (that is, had his disability not been identified).

I'm told that he currently has no prospects for release because there is no adequate community support. I'm also told that his behaviour continues to deteriorate partially because of the psychological impact of indefinite detention, and partially because he doesn't receive any targeted clinical support for his impairment.

A young Aboriginal man in the Northern Territory assaulted someone who was working with him. All involved considered it was a fairly minor matter, but he was charged with assault

If it had come before the regular courts, it probably would have attracted something in the range of a 4 month prison sentence. Instead, he was found unfit to plead and has now been imprisoned for over 5 years.

There has been an ongoing problem in terms of where he should be housed in the community so continues to be detained in the maximum security block of the prison.

These stories seem to me to represent some of the most egregious human rights violations in Australia.

The violation of rights starts pre-contact with the criminal justice system, when Aboriginal and Torres Strait Islander people with cognitive impairments and their families and communities are not provided with appropriate support, or even diagnosis.

The violation continues during engagement with police and the courts, where cognitive impairments of Aboriginal and Torres Strait Islander people are not recognised or understood. I note that Article 13 of the UN Convention on the Rights of Persons with Disabilities provides for equal access to justice for people with disabilities.

The violation continues when Aboriginal and Torres Strait Islander people with cognitive impairments are imprisoned without trial, let alone conviction. And then in several cases this detention becomes long-term and even indefinite.

Indefinite detention is in breach of Article 9 of the International Convention on Civil and Political Rights (ICCPR) which

prohibits arbitrary detention. Article 9(3) specifically states that anyone arrested “shall be entitled to trial within a reasonable time or to release.”

And Article 14(1)(b) of the Convention on the Rights of Persons with Disabilities (ICRPD) states that ‘the existence of a disability shall in no case justify a deprivation of liberty’.

The violation continues still, in the accommodation provided in several Australian jurisdictions which house prisoners with cognitive disabilities in prisons. Accommodating unconvicted prisoners with the general prison population is in breach of Article 10 of the ICCPR.

Article 10(3) of the ICCPR requires that prison systems be aimed at reformation and rehabilitation; but people with cognitive disabilities in these Australian jurisdictions appear to be given little to no targeted support.

Article 14(2) of the Convention on the Rights of Persons with Disabilities provides that

‘States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.’

In addition to the rights in the ICCPR, and the ICRPD, the Convention on the Elimination of all forms of Racial Discrimination is engaged when Aboriginal and Torres Strait Islander people are being disproportionately affected by these laws.

Australia has reservations to some of these particular provisions but that does not change the fact that Australia is breaching its obligations under international human rights law.

It is simply not acceptable for a country like Australia to imprison people with cognitive disabilities in mainstream prisons because we don’t have adequate alternatives – either alternative facilities or support in the community.

And it is especially unacceptable to ignore the issue and the individuals languishing in prisons across the country because the people affected are mainly Aboriginal and Torres Strait Islander and disabled – a combination which means they are especially vulnerable and often invisible.

I understand that the issues are complex – community safety is obviously the paramount concern. But individuals with cognitive impairment have some basic rights, as do people who are incarcerated, which cannot be abrogated. Indefinite detention without trial cannot be justified. Especially not by reason of inadequate resources being put into necessary services.

So what’s being done?

Disability Discrimination Commissioner Graeme Innes and I are hoping to investigate the issue further in the coming months and probably years. At this point, we are trying to raise awareness of the issues whenever we can.

And as I said earlier, the ADJC is in the final stages of some research.

There are a lot of committed people working very hard in this area.

It does seem that, after the Marlon Noble case and the revelations in the Northern Territory on Lateline, there is some action:

- WA is building Disability Justice Centres to be used as ‘declared places’ under the legislation (that is, as alternatives to prison)
- In the NT, two secure units designed for people with cognitive impairment (as an alternative to prison) are close to being opened.
- The NT government has also committed to building a new facility for up to 30 people with cognitive disability and mental health issues by 2015.

I understand Victoria has just announced a review of its legislation too.

But there is a desperate need for resources to be directed into supporting Aboriginal and Torres Strait Islander people

with cognitive impairment.

These resources are needed to support communities dealing with the types of behaviours which see these individuals imprisoned – to diagnose cognitive impairment early, using culturally appropriate assessments so that accurate diagnosis are made, and to put in place targeted, culturally appropriate, clinical support.

The resources are needed to prevent the offending behaviour getting as bad as it does so that individuals simply cannot live outside institutions safely. And in some situations there will be no alternative to institutional accommodation, but that should not be prison. The resources are needed to ensure there is appropriate alternative accommodation with the types of services required to properly deal with such complex needs in a way which respects the dignity and human rights of each individual as well as the rights of other members of the community.

And the resources are needed to ensure that the situation is properly researched and monitored in an ongoing way. At the moment, it seems that any facilities being built or systems being developed are based on only a partial knowledge of the extent of the problem.

I'll leave this discussion here for the moment and talk a bit more generally for the last part of my speech.

Broader concern re mental health of Aboriginal and Torres Strait Islander people

As the things I've discussed illustrate, the reasons why mental health and cognitive impairment disproportionately affect Aboriginal and Torres Strait Islander people in the criminal justice system go deeper than the states' legislative frameworks.

They go ultimately to the disempowerment of Aboriginal and Torres Strait Islander people and to the challenges we face across all areas of discrimination in our daily lives.

I set my agenda as Social Justice Commissioner to address the need to build stronger, healthier relationships:

- within our Aboriginal and Torres Strait Islander communities and
- between Aboriginal and Torres Strait Islander people and non-Indigenous Australians and
- with Government.

I believe these relationships are key to our health, happiness and wellbeing, which is, in turn, key to 'closing the gap' in imprisonment rates between Aboriginal and Torres Strait Islander people and non-Indigenous Australians.

But when we look at these relationships we can see why there is so much ill health in our communities and how so many of us end up in prison.

We need to look at the legislative frameworks which permit indefinite detention of cognitive impaired people from a human rights perspective – and that is relatively easy. There are so many clear breaches.

But we also need to undertake a broader, holistic, human rights analysis of how and why Aboriginal and Torres Strait Islander people are so disproportionately affected.

In my last few minutes I want to advocate the use of the UN Declaration on the Rights of Indigenous Peoples as a tool for this purpose.

The Declaration

The United Nations Declaration on the Rights of Indigenous Peoples was formally adopted by Australia in 2009. It contains a number of key principles underpinning the rights it protects, all of which are also key rights protected by international treaties:

- First, self-determination
- Second, participation in decision-making and free, prior and informed consent
- Third, respect for and protection of culture
- Forth, non-discrimination and equality.

In my opinion, the Declaration should be used as a tool to guide approaches to all areas in which human rights are engaged – and that is pretty much all areas of life.

But what does it mean in practice?

The Declaration is actually a very practical document. It takes fundamental rights and applies them to Indigenous peoples. It highlights some of the things which need to happen in order for Aboriginal and Torres Strait Islanders to genuinely enjoy human rights in the way other Australians do.

The Declaration spells out that the right to equality and non-discrimination includes the right to be different and to be respected as such.^[21]

The Declaration is not about favouring one group of Australians over another, but rather it recognises that Aboriginal and Torres Strait Islander people have a unique place in our national culture.

It recognises that for Aboriginal and Torres Strait Islander people to enjoy equal access to services such as healthcare, those services need to be designed and delivered differently – in ways which address the different needs of Aboriginal and Torres Strait Islander people and which are consistent with the different cultures of Aboriginal and Torres Strait Islander people.

The Declaration encourages respect for Aboriginal and Torres Strait Islander peoples' diversity of cultures and requires that our different needs are recognised and respected.

The Declaration recognises that a failure on behalf of the state to recognise, respect and accommodate our cultural differences actually disadvantages us in very tangible ways. The state has obligations to provide health services, for example. If the state provides these services in a culturally inappropriate way, this means we don't receive those services; we are unable to use them effectively, to our benefit. And that is discrimination.

This is something that has long been recognised, especially in the area of health.

Now we have this concise and instructive document at the international level, which signatory states, including Australia, have agreed to adhere to.

Governments need to prioritise the Declaration as a guiding tool for all policy development and service delivery. And the Declaration can be used to transform the relationship between government and Aboriginal and Torres Strait Islander people.

The Declaration can also be used by Aboriginal and Torres Strait Islander people to guide the development of healthy, respectful and inclusive relationships within our communities. For example, we can ask, are our representative organisations ensuring our people participate in decisions that affect us? In this way, it can be used as a tool in tackling lateral violence.

And the Declaration should also be used as a tool for reconciliation generally – for building relationships based on respect between Aboriginal and Torres Strait Islander people and the broader Australian community. The Declaration outlines how Aboriginal and Torres Strait Islander peoples should be valued in the broader community, in order for our human rights to be enjoyed equally with others.

Conclusion

So, to conclude.

Aboriginal and Torres Strait Islander individuals, and our communities, are struggling with mental illness and cognitive disability and extremely high rates of imprisonment. And in many cases, all at once.

The very complex needs of these individuals do not mean they can be put in the 'too hard basket' – especially not if that basket is indefinite imprisonment.

I urge you all to print out a copy of the Declaration on the Rights of Indigenous Peoples and give it a read every now and then. I hope that in the near future it will become a key consideration of all government decision-making and policy development. In the meantime, I hope it is used in this way by service delivery organisations who are perhaps more aware of the needs of Aboriginal and Torres Strait Islander people 'on the ground'.

The Declaration spells out how governments need to be particularly mindful, and take particular steps to ensure, that fundamental human rights are actually enjoyed by Aboriginal and Torres Strait Islander peoples equally with other

Australians. It is clear that in a number of ways – not least regarding access to justice for those with cognitive impairments – we are not enjoying our human rights equally at the moment.

Thank you.

- [1] Freeman, K., 'Mental Health and the Criminal Justice System'. Crime and Justice Bulletin: Contemporary Issues in Crime and Justice NSW Bureau of Crime Statistics and Research, No 38. October 1998, p2.
- [2] This was the definition used in AHRC, Preventing Crime and Promoting Rights for Indigenous Young People with Cognitive Disabilities and Mental Health Issues, 2008, p3.
- [3] AHRC, 2008, p9.
- [4] See E Baldry, L Dowse, M Clarence, People with mental and cognitive disabilities: pathways into prison Background Paper for the National Legal Aid Conference Darwin 2011:
<http://www.ntlac.nt.gov.au/doco/bpcpapers/People%20With%20Mental%20and%20Cognitive%20Disabilities%20-%20Pathways%20Into%20Prison.pdf>
- [5] AHRC, 2008, p3.
- [6] See E Baldry, L Dowse, M Clarence, People with mental and cognitive disabilities: pathways into prison Background Paper for the National Legal Aid Conference Darwin 2011, p5.
- [7] Across Australia, in June 2011, 27% of the prisoner population identified as Aboriginal and Torres Strait Islander: [ABS March 2012](#)
- [8] Across Australia, over 50% of young people in juvenile detention centres are Aboriginal and Torres Strait Islander: ABS 2008.
- [9] A recent Queensland study found that the 12-month prevalence of mental disorder in Aboriginal and Torres Strait Islander prisoners was 73% among men and 86% among women: E Heffernan, K Andersen, A Dev and S Kinner, Prevalence of mental illness among Aboriginal and Torres Strait Islander people in Queensland prisons, Med J Aust 2012; 197 (1): 37-41. See also E Heffernan, K Andersen, S Kinner, The insidious problem inside: mental health problems of Aboriginal and Torres Strait Islander people in custody. Australas Psychiatry 2009; 17 Suppl 1: S41-S46; <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=10737418955&libID=1073741895>
- [10] In 2009, 69% of female Aboriginal and Torres Strait Islander prisoners in NSW, and 74% of men, were intoxicated at the time of their offence; 55% of men and 48% of women in the same survey self-reported mental health condition, 2009 Inmate Health Survey: Aboriginal Report.
- [11] Australian Institute of Health and Welfare 2011. The health and welfare of Australia's Aboriginal and Torres Strait Islander people, an overview 2011. Cat. No. IHW 42. Canberra: AIHW, p86.
<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=10737418955&libID=10737418954> 94% of Aboriginal inmates in the NT were found to have significant hearing loss; T Vanderpoll and Dr D Howard, Investigation into hearing impairment among Indigenous prisoners within the Northern Territory Correctional Services, 6 July 2007
http://www.healthinonet.ecu.edu.au/uploads/resources/21173_21173.pdf
- [12] Australian Institute of Health and Welfare 2011. The health and welfare of Australia's Aboriginal and Torres Strait Islander people, an overview 2011. Cat. No. IHW 42. Canberra: AIHW, p86.
<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=10737418955&libID=1073741895>
- [13] Terms of Reference, Standing Committee on Social Policy and Legal Affairs, Inquiry into FASD, Feb 2012.
- [14] Smith, K., Lo Guidice, D., Dwyer, A., Thomas, J., Flicker, L., Lautenschlager, N.T., Almeida, O.P., & Atkinson, D. (2007) "'Ngana minyarti? What is this?'" Development of cognitive questions for the Kimberley Indigenous Cognitive Assessment', Australasian Journal on Ageing, 26 (3), 1159.
- [15] See the Social Justice Report 2010 for an example of a community dealing with this issue.
- [16] AHRC, 2008, pp65-66.
- [17] For example, in 1994, Mindy Sotiri and Jim Simpson prepared a discussion paper for ATSI; and in 1996 the NSW Law Reform Commission published a report People with an Intellectual Disability and the Criminal Justice System, which found that people with intellectual disabilities are over represented at all stages of the criminal justice system.
- [18] See AHRC, 2008, p9.
- [19] See See E Baldry, L Dowse, M Clarence, People with mental and cognitive disabilities: pathways into prison Background Paper for the National Legal Aid Conference Darwin 2011
- [20] <http://www.abc.net.au/lateline/content/2012/s3532797.htm>
- [21] Second preambular paragraph of the Declaration on the Rights of Indigenous Peoples.

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