



FIRST PEOPLES DISABILITY NETWORK (AUSTRALIA)

New South Wales Legislative Council Select Committee on the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody

AUGUST 2020

Question 1. So a youth who is held on remand—and I think the remand figures for juvenile justice are worse than for adult prisoners—do you know what assessment of kids on remand happens or do they essentially just get held and spat out one way or another out of the system in due course?

Answer 1. I refer to the latest BOCSAR data regarding the figures of adult versus juvenile prisoners on remand.

https://www.bocsar.nsw.gov.au/Pages/bocsar_custody_stats/bocsar_custody_stats.aspx

The formal assessment of youth on remand falls within the jurisdiction of Juvenile Justice and as the governing body are the most appropriate to address this question.

Question 2. Could you make some suggestions to the Committee about how that might be done in very practical terms. What might be utilised and how could that be a recommendation. I appreciate this is on the run. You might want to go away and think about that. Through what existing systems and/or new practical ways could this suggestion be implemented?

Answer 2. At the First Peoples Disability Network Australia - we strongly advocate that there should be disability support workers employed to support prisoners within the Police, Legal aids, Court systems, Correctional facilities and Probation and Parole. There should also be disability training building capability in all of the mentioned departments. This would ensure an understanding of any diagnosed or undiagnosed disabilities, a commitment that these individuals must be supported and for an engagement and consultation to explore alternatives to incarceration such as Justice Reinvestment led by Just Reinvest NSW; focussed on community led solutions such as early intervention, prevention and diversionary initiatives.

Question 3. The second question I guess ties in with the legal diversionary programs that you talked about, of which I am an advocate and a fan. The more people we can divert away earlier, particularly our young people and particularly those with mental health and other disabilities—I just wanted to ask if you could give us some very practical suggestions about that period before they enter the criminal justice system or at that very early stage.

Answer 3. The social model of disability applies a holistic approach to how disability can be supported across different sectors and departments. With considerations of disability included in education and employment opportunities especially, will ensure inclusion of the person with disability to contribute to society and to avoid the criminal justice system.

Question 4. Your submission talks about Australia's ratification of the UN optional protocol to the convention against torture. Obviously, this has quite significant impacts around the oversight of places of detention. Your submission on page 8 talks about some concern in New South Wales about the cost and other implications of the implementation of this. Could you comment on that? Part of what this Committee is trying to do is talk about oversight mechanisms. We are yet to even talk about the fact that there is a whole Commonwealth process going on as a result of ratification of that protocol that would impact any of the recommendations we

would make here. Could you take us through that? This is the first time it has come up.

Answer 4. Practicalities regarding the UN Optional Protocol to the Convention against Torture and other Cruel, Degrading Treatment and Punishment (OPCAT) would see the NSW Government lead and proactively work with other Australian jurisdictions, including the NDIS Quality and Safeguards Commission. The independent monitoring and oversight function of the NPM must ensure unfettered access for independent investigators into all places of detention, in terms of criminal justice that includes prisons and juvenile detention facilities, but also monitoring of police holding cells, transport and detention facilities, and all forensic and community based detention facilities.

Question 5. I have read your submission about raising the age of criminal responsibility, which you say is a matter of urgency. We probably do not have time to go into it now, but could you on notice just unpack how age of criminal responsibility and disability are so intricately linked, particularly given the high level of disability amongst Aboriginal kids?

Answer 5. There is medical evidence that clearly shows how developmentally, children are very different to adults. A child having relatively immature brain development when it comes to decision-making, organisation, impulse control and planning for their future. Disabilities impact this greatly and require additional support and consideration. The Royal Commission into the Protection and Detention of Children in the Northern Territory provided a number of recommendations for fixing broken youth justice systems. As part of this, the Royal Commission made the landmark recommendation to raise the age of criminal responsibility. The Royal Commission recommended raising the minimum age of criminal responsibility that is fully supported from a health perspective.