“No End in Sight”
The Imprisonment and Indefinite Detention of Indigenous Australians with an Intellectual Disability and Acquired Brain Injury

Aboriginal Disability Justice Campaign
Mental Impairment Legislation is the Judicial Option for People who commit crimes but are Unfit to Plead

Unfortunately people with an ID / ABI subject to the Mental Impairment findings often experience Indefinite Detention

People with an Intellectual Disability (ID) or Acquired Brain Injury (ABI) subject to mental impairment regimes are being detained indefinitely in prisons in Western Australia and the Northern Territory and in psychiatric units in Queensland and Tasmania

Indigenous Australians with ID / ABI are particularly affected by this practice
Imprisonment and Indefinite Detention is disproportionately affecting Indigenous Australians with an ID / ABI

In WA, 11 of the 33 people detained under the mental impairment legislation are Indigenous Australians with 10 being detained in a prison.

In the NT there are 9 people with an ID / ABI detained in maximum security prisons under the mental impairment legislation, all are Indigenous Australians.

In Queensland, it is estimated that there are over 100 people with an ID / ABI detained under the Forensic Disability Act in psychiatric units with between 30 – 40 identifying as Indigenous Australians. Queensland does not collect data on how many people are detained or how many identify as Indigenous.

The absence of services in SA means that all Indigenous Australians subject to mental impairment legislation are detained in prison – however SA does not collect any data on how many people are being detained or how many people are Indigenous.
Mental Impairment (Unfit to Plead) Legislation

Mental Impairment legislation provides an alternative pathway through the criminal justice system for people with a cognitive impairment who have committed a crime but:

1. May not understand the difference between right and wrong / guilt or innocence
2. May not be responsible for their actions because of their impairment

Mental Impairment legislation tries to strike a balance between the protection of the community with the rights of the individual to justice
Treatment of Significant Benefit

A person who is assessed as Mentally Impaired and found Unfit to Plead:

• Is not found innocent or guilty of any crime
• Is not convicted
• Cannot be considered a prisoner or an offender

Instead they are placed on a supervision / custody order and detained for the purposes of TREATMENT
BUT THERE’S A BIG PROBLEM......

........ IF THERE ARE NO ACCOMMODATION AND SUPPORT OPTIONS WHERE TREATMENT CAN BE PROVIDED

THEN....

A PRISON OR A PSYCHIATRIC UNIT BECOMES THE ONLY OPTION WHERE THE DETENTION CAN OCCUR

UNTIL 2012 PRISON WAS THE ONLY OPTION IN WA and the NT (which uses maximum security prisons)
Why Does Detention Become Indefinite?

Detention can become indefinite if:

1. There is an assessment at the conclusion of the supervision / custody order that the person with an ID / ABI still constitutes a risk of harm to others

2. There is nowhere for the person with an ID / ABI to be safely accommodated upon leaving the prison
Why Are Indigenous Australians with ID / ABI Particularly Vulnerable to Indefinite Detention

Over-representation in the criminal justice system:

• More likely to come to the attention of police
• More likely to be charged
• More likely to be remanded in custody
• More likely to be sentenced and imprisoned
• Spend longer in custody
• Less likely to be granted parole
• Have fewer treatment and support options available
Why Are Indigenous Australians with ID / ABI Particularly Vulnerable to Indefinite Detention

Indigenous Australians understand disability differently

Many Indigenous Australians live outside major metropolitan areas making it difficult to access specialist disability support

Minor problems that occur when a child are often left to become entrenched, dangerous complex problems when an adult

Indigenous Australians with an ID / ABI are often marginalised and isolated within their communities

Indigenous Australians with an ID / ABI can be violent towards their families and communities

Indigenous communities may not always have the capacity to support people with ID / ABI given the range of issues they confront
The Aboriginal Disability Justice Campaign decided to document the issue for the Federal Government

“No End in Sight”:

– documents why mental impairment legislation leads to imprisonment and indefinite detention
– Outlines how Indigenous Australians with an ID / ABI are disproportionately affected by the practice
– Provides a state by state analysis of the impact of mental impairment legislation on people with an ID / ABI, particularly Indigenous Australians
Main Themes Arising.....

- That very few Indigenous Australians with an ID / ABI require highly restrictive, secure facilities to manage their risk – just targeted, structured support
- Prisons and psychiatric units are being used as accommodation options
- The majority of people responsible for mental impairment legislation are uncomfortable with the fact that it leads to indefinite detention
- Indigenous Australians with an ID / ABI under orders and in prisons and psychiatric units are generally not receiving treatment of significant benefit for their forensic behaviours
- Aboriginal families and communities are generally having to support, accommodate and manage their family members with an ID / ABI who often perpetrate violence against them
- The philosophies of Justice and Disability are often in conflict regarding the management of people subject to mental impairment legislation
- That few jurisdictions are collecting data relating to detaining people under mental impairment legislation
Indefinite Detention and International Human Rights Treaties

Equality before the law (article 26 ICCPR)
Deprivation of liberty based on disability (article 14 CRPD)
Inhumane treatment (article 10 ICCPR)
Capacity for trial (article 12 CRPD)
Right to a fair trial (article ICCPR)
What Needs to Change.....

• Stop using prisons as default accommodation options: only use prisons as last resort option
• Stop detaining people with an ID / ABI in psychiatric units
• Implement limiting terms
• Balance the right of the community to safety with the rights of individuals to access to justice
• People detained under mental impairment legislation are to have regular judicial reviews
• Provide secure, community based, treatment focussed, accommodation and support
• Recognise the centrality of culture when responding to Indigenous people