



Opening Address Counsel Assisting – Kerri Mellifont QC

Public Hearing 11: The experiences of people with cognitive disability in the criminal justice system

Brisbane 16 February 2021

Introduction

1. Good morning. My name is Kerri Mellifont QC. I am Senior Counsel Assisting the Royal Commission. I appear this week with Ms Janice Crawford and Mr Ben Power of Counsel. We are assisted by the Office of the Solicitor Assisting the Royal Commission and by Ms Avelina Tarrago of Counsel.
2. We acknowledge and pay our respects to the traditional custodians of the various lands on which we participate in this public hearing. We pay our respects to First Nations elders past, present and emerging as well as to all First Nations people involved in and following this public hearing.

3. This is the 11th public hearing of the Royal Commission, and the first to focus on criminal justice.
4. There are two key topics to be explored in this hearing, the first is criminalisation of people with disability, and how enmeshment, that is, cycling in and out of the criminal justice system, of people with disability comes to occur. How there is a desperate need for supports – proper supports – to break this cycle. In this context, one witness you will hear from is Ms Dorothy Armstrong, a person with an acquired brain injury, who was first a victim, then an offender, and then an advocate: she will tell you that “If someone asked, when I was offending in my 20s, why I was alone and helped link me to service, if someone had asked in my 30s, why I had so many injuries and helped me find a way out of my situation ... I can only imagine what difference someone asking me the question and offering support could have made to my life. Maybe I wouldn't have had some of the horrendous experiences, I can only imagine.”
5. The second is indefinite detention. Here that term is used to include not just orders which are in fact called “indefinite detention” but also orders whereby there is no definite ceiling for the period of time the person is in custody before being released to the community, for example, “limited term” orders in the NSW system.

6. The hearing is being held in Brisbane and Sydney, and while the hearing rooms are not open to the general public due to Covid-19 risk management, the hearing can be followed online on the Royal Commission's website.
7. Over the next eight days we will hear from approximately 33 witnesses. We thank all of these individuals for their contribution to our inquiry. We particularly acknowledge the people with disability who are giving evidence in this hearing. Each of them will give evidence in the way that accords with their individual wishes. That means that some will give their evidence through pre-recorded evidence, while others will give their evidence live.
8. We are aware of how challenging it might feel to revisit difficult events in their lives, or the lives of those they love, in such a public way. We acknowledge and thank each of them for their important contribution. Their voices and evidence are critical to the work of the Royal Commission.
9. In addition to hearing from people with direct lived experiences of these issues, we will also hear from academics, health professionals, advocates and government representatives from New South Wales and the Northern Territory.

10. This hearing builds upon what we have heard through submissions, responses to issues papers, and our community engagements with people across Australia about the experiences of people with disability in the criminal justice system. It also contains links to the first Nations hearing held last year, and the first nations hearing planned for later in this year. This hearing is but one piece of the Royal Commission's continued work in criminal justice.
11. We thank everyone who has engaged with the Royal Commission so far. We continue to welcome contributions.
12. We also wish to take this opportunity to advise that some of the evidence in this hearing may be distressing, and the names of some First Nations persons who have passed may be mentioned.
13. The hearing will include references to acts of violence, abuse, neglect and exploitation of people with disability and may include references to suicide and self-harming behaviour. The first of the case studies we will hear, Melanie, will include reference to such matters.
14. We encourage you to seek support if you want or need to. If any part of this hearing raises concerns for you please contact the National Counselling and Referral Service on 1800 421 468.

The criminal justice system

15. At its core, the criminal justice system is about the Rule of Law. It is a process whereby parts of the government, including police, corrections and the Courts, seek to execute and administer the law to promote a safe society for us all, by detecting and deterring crime. However, data (such as it is) shows that people with cognitive disability are significantly overrepresented in the criminal justice system, particularly First Nations people with cognitive disability. Why is this so? Is the justice system being used as a defacto disability service? And one that proceeds by punitive rather than therapeutic measures. And if so, why and what can be done about it, and by whom?
16. We explore these issues by two case studies concerning two people held in long term detention, and by a case study of a pilot diversion programme, as well as by hearing evidence from experts and advocates about systemic features and failures.

Past reports and projects

17. The work of this Royal Commission includes examining relevant past reports and inquiries: to see what others have looked at and to consider what has happened since.

18. In the course of preparing this hearing, a document prepared by the policy division of the Royal Commission which sets out an analysis of key themes arising out of those past reports system will be tendered.
19. To set the context of this hearing against relevant past inquiries, reports and recommendations, it is useful to note here some of those key themes emerging from those past inquiries:

a) Principle of least restriction

Many Reports recommended that governments ensure that people with cognitive impairment who have not been convicted of an offence are detained as a measure of last resort, for the shortest appropriate period of time, and in the least restrictive appropriate environment. If there is a less restrictive alternative that would achieve the same aim, then that alternative should be applied.

b) Early intervention and prevention

Several Reports recommended that governments should focus on increasing resources for targeted prevention and early intervention approaches and programs that ensure people who are at high risk of coming into contact with the criminal justice system are identified and provided appropriate support, including mental healthcare and housing.

c) Cost benefits of early intervention and prevention

A number of reports noted economic savings through providing early support and diversion. The benefits of a justice reinvestment approach has also been a frequent theme and there have been many recommendations made around this.

d) Disability training, education and awareness

Several reports recommended that governments should take steps to ensure regular disability training, education and awareness

raising initiatives for justice system personnel who are likely to have close contact with people with disability, including police, legal practitioners, judiciary and corrections officers. People with disability including First Nations people, should be involved in developing training resources. Training should include consideration of trauma-informed and recovery-orientated approaches within the justice system.

e) Role of supports

Some reports have found that support persons and or communication assistants / intermediaries can improve the accessibility of proceedings and may reduce the need for unfitness to stand trial proceedings.

Some reports have recommended that a support person or guardian should be made available or appointed to people with cognitive disability during the trial process to assist them to navigate the justice system and prevent them being found unfit to plead, where they can understand trial processes with appropriate support. Where a person with a cognitive disability is detained or questioned, there should be a formal requirement to provide an interpreter service, communication support worker or appointment of a guardian or advocate, particularly when concerning First Nations people.

f) Community supports

Several reports have recommended increased community mental health supports and the availability of secure supported accommodation in the community to transition people back into the community.

g) NDIS eligibility for people found not guilty by reason of mental illness or unfit to plead

Reports have also raised the need to identify and link NDIS services for people post-release. Some reports have recommended that governments should ensure that there is automatic eligibility to participating in the NDIS for people found not guilty by reason of mental illness or unfit to plead.

h) Data collection

Several reports have recommended that governments should lead a coordinated and sustained effort to improve data collection about the interaction between people with disability and the justice system, to ensure policy and law reform is evidence-based. Relevant gaps include access and use of courts and tribunals, the legal profession and the legal assistance sector, to improve justice sector data consistency and reliability to ensure that it is useful and readily available for planning and monitoring. Data should be disaggregated, including on the basis of race, gender identity, intersex status, age, disability, socioeconomic status and family responsibilities.

i) Disability Justice Strategies

The AHRC's 2014 report, *Equal before the law – Towards Disability Justice Strategies*, recommended the development of Disability Justice Strategies in each state and territory. Disability Justice Strategies sets actions to implement and promote access to justice for people with disability, based on appropriate communication, early intervention and diversion, increased service capacity and support, effective training, enhanced accountability and monitoring and better policies and frameworks. Disability Justice Strategies should be linked to the National Disability Strategy and the National Disability Agreement.

(j) Whole of government approach

Reports also recommended that whole-of government action and reform is needed to develop a comprehensive response to the needs of people with disability who are in contact, or at risk of contact, with the criminal justice system.

International Obligations

20. The Australian Government has committed to international agreements that place a responsibility on us to meet agreed international standards. These agreements include commitments to protect the human rights of citizens including specific commitments relevant to forensic patients.
21. In broad terms, a forensic patient is a person who has:
- Been found unfit to be tried for an offence and ordered to be detained in a correctional centre, mental health facility or other place; OR
 - Been found not guilty by reason of mental illness and ordered to be detained in a correctional centre, mental health facility or other place or released into the community subject to conditions.
22. It is relevant to note something here about the concept of fitness to plead: The legal issue of fitness to plead arises principally in the context of a person's mental or physical capacity. At common law a person suffering from a mental or physical incapacity may be unfit to plead: if so, no plea can be taken, and the trial cannot proceed. The law relating to fitness to plead is complex, and differs across Australian jurisdictions.
23. According to the United Nations Standard Minimum Rules for the Treatment of Prisoners (commonly referred to as the Mandela Rules):

'persons who are found to be not criminally responsible, or who are later diagnosed with severe mental disabilities and/or health conditions, for whom staying in prison would mean an exacerbation of their condition, shall not be detained in prisons, and arrangements shall be made to transfer them to mental health facilities as soon as possible.'

There are also obligations to 'ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric aftercare.'

24. According to the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (United Nations General Assembly, 1991), 'all persons have the right to best available mental health care' and 'every patient shall have the right to be treated in the least restrictive environment and with the least restrictive or intrusive treatment appropriate to the patient's health needs and the need to protect the physical safety of others.' The Australian Health Ministers' Advisory Council has reaffirmed these principles and expanded upon them in the National Statement of Principles for Forensic Mental Health. Those principles are to be read with the National Statement of Principles relating to Persons Unfit to Plead or Not Guilty by Reason of Cognitive or Mental Health Impairment, referred to by the chair, as well as with, the National Framework for

Recovery-oriented Mental Health Services, and the National Framework for Reducing and Eliminating the Use of Restrictive Practices.

25. Australia has ratified the United Nations Convention on the Rights of Persons with Disabilities (2008) (CRPD) which commits states to take all necessary measures to combat stigma and enable disabled people to fully participate in society. The Chair has noted some of the specific provisions of that CRPD of relevance to this hearing. Australia has also ratified the CRPD's associated 'Optional Protocol' which provides a monitoring mechanism for breaches of the Convention. The Convention and 'the Protocol' apply to forensic patients.
26. In its concluding observations on Australia's combined second and third periodic reports, the CRPD committee expressed its concerns about laws that result in the arbitrary and indefinite detention of people with disability and that such laws disproportionately affect First Nations people with disabilities and people with cognitive and/or psychosocial disability. The CRPD Committee also expressed concern at the absence of national data disaggregated by disability at all stages of the criminal justice system, including data on the number of people found unfit to plead who are committed to custody in prison or other facilities.

27. The RANZCP (Royal Australian and New Zealand College of Psychiatrists) position statement notes that 'The rights to justice and freedom from arbitrary detention have been breached [in Australia] by the indefinite incarceration of forensic patients and the lack of needed treatment, support and planning for their return to the community. The right to freedom from cruel and degrading treatment may have been compromised by detention in prison due to lack of forensic facilities, the excessive use of solitary confinement (seclusion) to control forensic patients and the lack of effective legal remedies for mistreatment.'
28. The Fifth National Mental Health Plan acknowledges that 'international norms and standards are generally seen as the minimum acceptable standard for health policy'. In addition to the international agreements mentioned previously other relevant agreements are the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Rights of the Child, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination Against Women, International Convention on the Elimination of All Forms of Racial Discrimination and the United Nations Declaration on the Rights of Indigenous Peoples.

Data

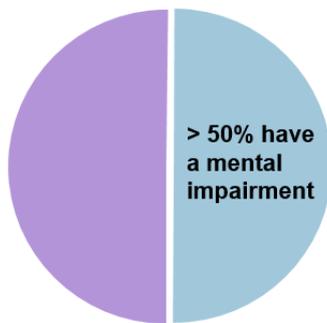
29. Despite these international aspirations, the data, such as is available indicates that people with disability are disproportionately represented in the criminal justice system.
30. Take, as just one example, one research piece referred to by Professor Baldry in her statement. There, a (limited) study of people before WA local courts showed that more than 50% had an intellectual impairment, compared with 2% of the general population.

Paragraph 55

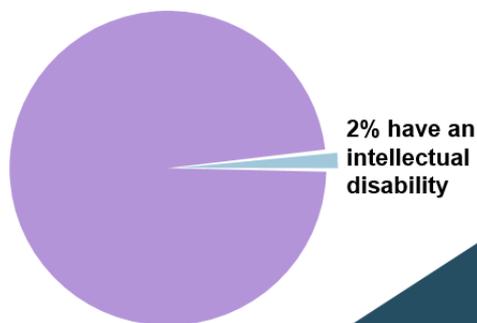
WA Magistrates Court

Mental Health Commission (date unknown) Mental Health 2020. Government of Western Australia, p 37: Intellectual Disability Rights Service (2008) Enabling Justice, IDRS, p 13.

PEOPLE GOING TO LOCAL COURTS



GENERAL POPULATION

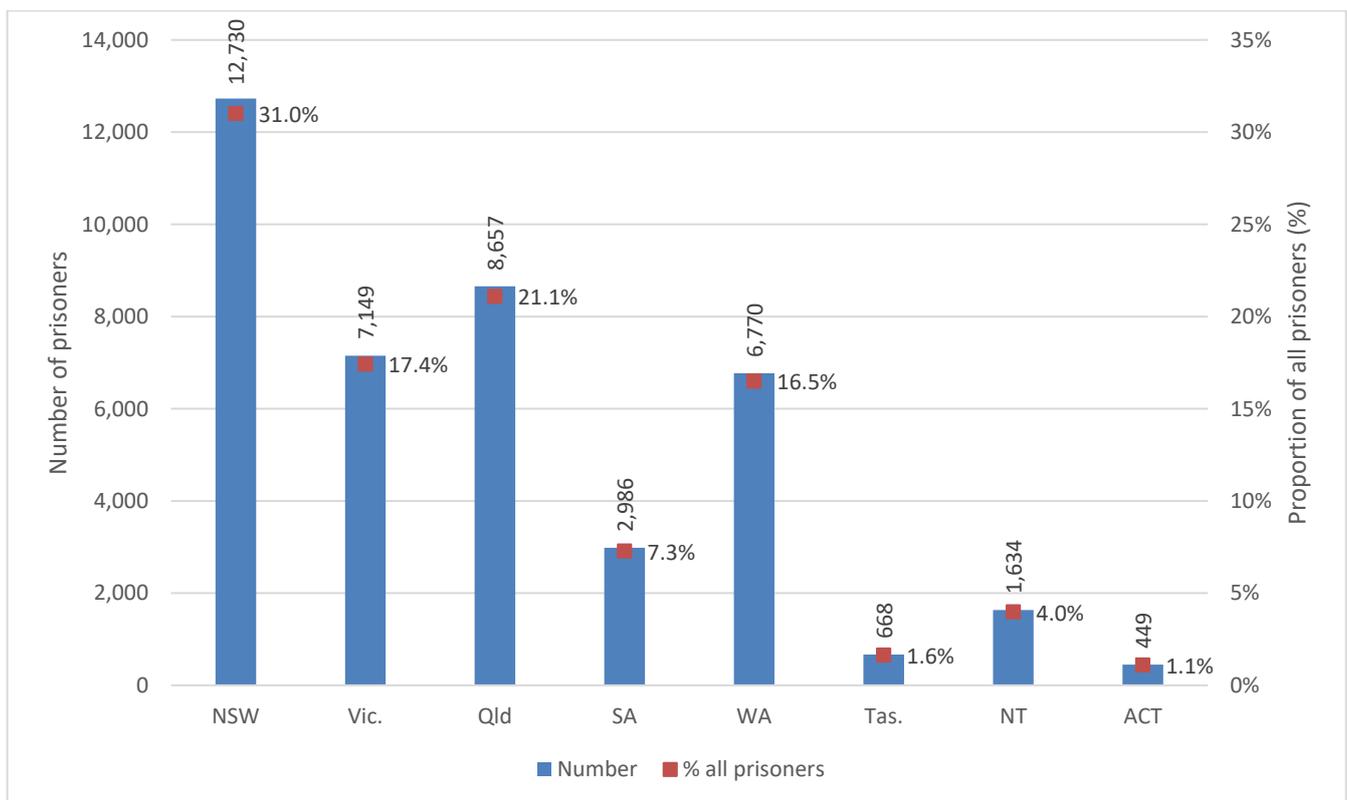


Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

31. Data received and analysed by the Disability Royal Commission indicates as follows:

Around 41,000 prisoners in Australia

32. The Chair has referred to there being approximately 41 060 prisoners in Australia on 30 June 2020.
33. The figure which is about to come up on screen shows the. Number and proportion of prisoners by state and territory, 2020.



Source: Australian Bureau of Statistics, *Prisoners in Australia 2020*, Table 14: Prisoners, selected characteristics by state/territory.

Prisoners with disability

34. Despite State obligations under article 31 of the CRPD to collect appropriate information, including statistical and research data, to enable the formulation and implementation of policies to give effect to

the convention, there is insufficient high quality data are on the number of prisoners with disability. Work that is currently underway as part of the criminal justice case study for the National Disability Data Asset is attempting to fill this data gap. This case study is being conducted by the NSW Bureau of Crime Statistics and Research (BOCSAR) in partnership with the Commonwealth Government (specifically the Department of Social Services and the National Disability Insurance Agency) and the NSW Department of Premier and Cabinet, and is due to report early findings from around April/May 2021.

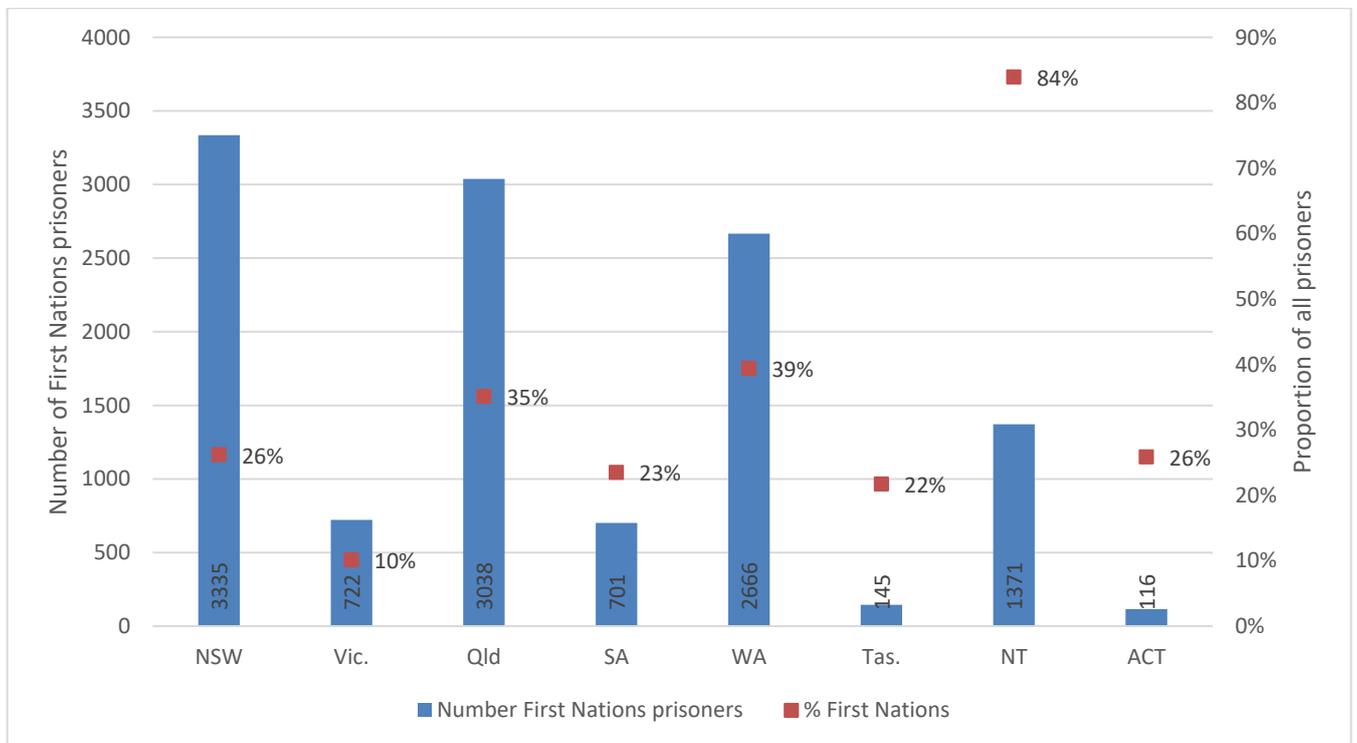
35. The best available data on the number of prisoners with disability is contained in the Australian Institute of Health and Welfare's *National Prisoner Health Data Collection* from May 2019. And you have heard the chair state that 29% of prison entrants had a long term health condition or disability that affected aspects of their lives.
36. This is much higher than the proportion of people with disability in the general population, where around 13 per cent of adults aged 18 to 64 years have disability.

First Nations people comprise 29 per cent of all prisoners

37. You have heard the Chair cite June 2020 figures that, 29 per cent of all prisoners were first Nations people.

38. The figure (Figure 2) about to be shown shows, that NSW had the highest number of First Nations prisoners (3335 First Nations prisoners in total), representing 26 per cent of all prisoners in that state. As you have heard, First Nations prisoners represented 84% of prisoners in the NT.

39. Figure 1. Number and proportion of First Nations prisoners by state and territory, 2020



Source: Australian Bureau of Statistics, *Prisoners*

First Nations people 15 times more likely to be in prison

40. First Nations people were more than 15 times more likely to be in prison than non-Indigenous people.¹

Two main topics of this hearing

Criminalisation & enmeshment

41. As you have heard, the Commission will hear from eminent criminologist, **Professor Eileen Baldry AO**, who will explain the concept of criminalisation, how studies have shown that people with cognitive disability, who are not provided with the necessary supports, cycle in and out of the criminal justice system. The evidence explores the systemic issues that bring people with a disability into contact with the criminal justice system and how they become trapped in a cycle of incarceration and release leading to a sense of hopelessness.
42. The Chair has spoken of a large proportion of prisoners being in prison entirely because of their cognitive disability and the questions that gives rise to.

¹ Australian Bureau of Statistics, *Prisoners in Australia*, 3 December 2020, Table 17: Imprisonment rate, selected characteristics by state/territory.

43. Professor Baldry's evidence, like that of some other witnesses, will also shine a light that there is actually an evidential base for the argument that, in addition to the obvious social benefits, there is an economic cost benefit to the community in investing in providing supports to people with cognitive disability: that is, such supports not only provide meaningful benefit to the direct recipient, but actually provide an economic benefit to society. It is a case of spend money to save money.
44. **Dr Piers Gooding** is a Research Fellow with the Melbourne Social Equity Institute. His evidence is relevant both to criminalisation and to indefinite detention.
45. Dr Gooding will discuss the different legal frameworks that exist across Australian jurisdictions that give rise to a risk of indefinite detention for people with cognitive disability.
46. Dr Gooding's evidence will discuss the potential use of Disability Justice Support Persons to assist accused persons with cognitive disability in their interactions with the criminal justice system. He will discuss the long-term cost benefits of providing intensive support for people with cognitive disability at an early stage of their involvement in

the criminal justice system, to improve their access to justice and to reduce the risk of their indefinite detention.

47. [Display Schematic] This graph reflects data from Dr Gooding's statement. It shows the costs of different hypothetical pathways through the criminal justice system based on a person with disability in a study Dr Gooding conducted. It illustrates that, whilst there are costs for diversions from the criminal justice system, there can be much higher costs without diversion.

Professor Patrick Keyzer

48. Professor Patrick Keyzer is a Professor of Law and Public Policy and the Dean of the Law School of the Australian Catholic University. Professor Keyzer was involved in making a complaint to the United Nations in 2017 regarding one of the case studies we will explore in this hearing (Winmartie's case), as well as representing him in other court hearings.
49. Professor Keyzer will discuss the challenges First Nations people with cognitive disability who come into contact with the criminal justice system face. He will describe the systemic changes that he considers can be made to reduce the disproportionately negative effect of the criminal justice system on First Nations people with cognitive disability.

Dr Kathy Ellem

50. Dr Kathy Ellem is a Senior Lecturer in the Faculty of Health and Behavioural Sciences at the University of Queensland. Dr Ellem's evidence will explain some of the reasons for the overrepresentation of people with cognitive disability in the criminal justice system.
51. Through the use of individual case studies, Dr Ellem will illustrate the shortcomings of the supports available for the people with cognitive disability who are at risk of becoming enmeshed in the criminal justice system. A key part of Dr Ellem's evidence will be her 2019 research on the need for relationship-based supports for people with cognitive disability to access services and training to avoid the cycle of imprisonment.

Legal Assistance/Advocacy Panel – Lewis Shillito, Cheryl Axleby,

Tania Wolff, Jim Simpson

52. The Commission will hear from a panel of four persons who work in the system: they are Lewis Shillito, Director of Criminal Law, Aboriginal & Torres Strait Islander Legal Service (Qld); Cheryl Axleby, Former Co-Chair, National Aboriginal Torres Strait Islander Legal Services; Tania Wolff, Principal and Director of Legal Services, First Step, President Law Institute of Victoria and Sessional Legal Member, Mental Health

Tribunal; and James Simpson, Senior Advocate, Council for Intellectual Disability. Collectively, the panel has broad experience about common barriers experienced by people with disability in the criminal justice system.

53. The panel will speak to the proposition that people with cognitive disability, particularly First Nations people with cognitive disability, are overrepresented in the criminal justice system, including in remand. Criminalisation of disability may result in a process of ‘cycling’ when people with disability become ‘caught in a cycle of social exclusion and criminalisation, resulting in their incarceration and re-incarceration in the criminal justice system’ rather than supported through community based programs. Inadequate or unavailable community supports and service gaps are contributing factors to the overrepresentation of people with disability in the criminal justice system. This includes, but is not limited to, lack of supports in place to help people with cognitive disability navigate the criminal justice system. Services that assist people identify eligibility and access diversionary programs are under resourced and under strain leading to issues such as limited resourcing, delays in assisting clients and staff burnout.
54. They will speak of their views as to the need for appropriate supports to be in place, in addition to legal representation, to assist people with

disability to navigate the criminal justice system, and connect with supports which might reduce the likelihood of reoffending and, at best, end the cycling in and out of the criminal justice system.

Lived experience witnesses

55. Lived experience witnesses, Geoffrey Thomas, Taylor Budin, Dorothy Armstrong and Justen Thomas (*not related to Geoffrey) will tell their stories of past offending and incarceration and explain what and who assisted them to break that cycle.

Justen Thomas

56. Mr Justen Thomas is a 42 year old Aboriginal man with epilepsy and an intellectual disability. Mr Thomas will give evidence of his experience with the criminal justice system and the assistance he received from Intellectual Disability Rights Service and another community legal centre to enable him to make a fresh start.
57. Since that time, he has worked as an advocate with agencies such as the Council for Intellectual Disability and the Intellectual Disability Rights Service. Mr Thomas also addressed the United Nations in 2019. Mr Thomas will speak about the changes that he believes should be made to better support people with cognitive disability in their interactions with the criminal justice system.

Dorothy Armstrong

58. Dorothy Armstrong is a 49-year-old woman with an Acquired Brain Injury. Ms Armstrong is a direct evidence witness who will be giving evidence via AVL in a panel discussion with Michael Haralambous.
59. Ms Armstrong's first experience with police was when she was 17 years old and has experienced the criminal justice system as a victim and an offender. Her offending took place when she was 17-18, in her late 20s and her last experience in her late 30s. Ms Armstrong went to prison for 16 months the first and only time when she was 37 years old.
60. In 2008, Ms Armstrong was diagnosed with an acquired brain injury. This was shortly before she was incarcerated in a maximum security prison. After her release on parole in 2010, Ms Armstrong was homeless and was without supports. Gradually, she has found her way- the first step being accommodation provided under a community/government initiative.
61. In 2015 Ms Armstrong became involved with the Centre for Innovative Justice at RMIT University after being invited to participate in the "Justice User Group". The group comprised of people with ABIs who had experience with the criminal justice system. She was the first woman to participate in the program. The project resulted in the

“Recognition, Respect and Support, Enabling Justice for people with an Acquired Brain Injury” report. Since first engaging, Ms Armstrong is now employed by the CIJ as an Adviser and is a Self-Advocate.

Michael Haralambous

62. Ms Armstrong will be giving evidence with Michael Haralambous is an advocate in the disability sector and is a Senior Adviser at the Centre of Innovative Justice at RMIT University. Ms Armstrong and Mr Haralambous will give evidence about the Centre’s work which includes research on therapeutic jurisprudence, restorative justice, victim services, family violence, women’s decarceration, disability in the criminal justice system, as well as the application of human-centred design to legal issues and processes.

CIDP

63. The last in-depth case study for this hearing is the CIDP, which was a pilot program run by the Intellectual Disability Rights Service (IDRS) between 2017 and 2020 and funded by the NSW government.

64. The objective of the CIDP was to increase the diversion of people with a cognitive impairment charged with low level offences away from the criminal justice system under s. 32 of the *Mental Health (Forensic Provisions) Act 1990* (NSW) or through other non-custodial sentences.

This was primarily achieved by providing dedicated support people, who would arrange and coordinate expert reports to support applications for diversion orders, apply for additional NDIS funding and assist with coordinating services, and help legal representatives to provide accessible advice and representation.

65. The NSW Government decided not to continue funding beyond 30 June 2020.
66. That program, which acted in a holistic way to provide support and assistance to people with cognitive impairment before the Court, was felt to be highly effective.
67. We will use this case study to explore:
 - (a) Issues that cause people with cognitive disability to become enmeshed in the criminal justice system, including the specific shortcomings of the criminal justice system and the barriers it creates.
 - (b) That disability programs are ‘trialled’ on a short-term basis.
 - (c) How a program’s “value” is assessed.
 - (d) As CIDP funding ended only recently, there is a unique opportunity to explore the specific reasons for the decision to cease funding

with the individuals involved, including the reliance upon costs-benefit analyses, in respect of which the Royal Commission will also have the evidence of actuarial consultant, John Walsh, who has expertise in cost assessment/cost/benefit analysis. His evidence will assist the Royal Commission to understand the limitations of such assessment depending on the scope of terms of reference and available data. In determining benefits for costs-benefit analysis, particular regard must be had to inputs which accurately take account of the effect of the program under review for people with disability. Such considerations are not always easily quantified but there are ways that they can be factored into costs benefit calculations.

68. Michael Coutts-Trotter, Secretary of the NSW Department of Communities and Justice will provide information about the CIDP including:

- (a) the reasons for its introduction as a pilot program in 2017;
- (b) the success or otherwise of its implementation;
- (c) its operation at pilot sites in Penrith and Gosford; and
- (d) the rationale behind the Department's decision to cease funding the program in 2020.

IDRS Witnesses

69. You will hear from **Mr Michael Baker**, advocate, IDRS and **Ms Janene Cootes AM**, Executive Officer, Intellectual Disability Rights Services, who will speak to what the CIDP was able to accomplish, as well as the challenges of short time and uncertain funding.

Success stories

70. Mr Baker speaks of one of his clients having cycled in and out of custody for about 10 years. He was facing five criminal charges and what would have been regarded as an inevitable term of imprisonment. Legal Aid New South Wales referred him to CIDP and the neuropsychological assessment revealed he had significant frontal lobe brain damage resulting from a severe traumatic brain injury consequent on an assault about nine years prior. He had never before been identified by the criminal justice system as having a cognitive impairment. CIDP worked with this person and a diagnostic report was used to support a successful application to the NDIS, to obtain the DSP, to obtain stable accommodation through Housing New South Wales, and to get a section 32 order which had a support plan thereby avoiding a very likely custodial sentence.

71. Ms Cootes also recounts a poignant example of the impact of the programme.
72. JAS recently worked with a 19 year old Aboriginal man with Autism Spectrum Disorder. The Magistrate asked JAS to support him. He had had frequent criminal justice contact from the age of 14 and was on remand in an adult correctional centre. JAS ascertained that he was an NDIS participant but he didn't realise what NDIS was and had never used any funds or services. JAS brought this to the attention of the prison welfare staff who involved an NDIS Justice Liaison Officer to address this. His history meant that a custodial sentence was likely. The Aboriginal Legal Service successfully applied for a diversionary order under section 32 of the *Mental Health (Forensic Provisions) Act 1990 (NSW)*, based on the services arranged with the NDIS package. This was the first time this young man had received a section 32 order from the court.
73. You will hear from Taylor Budin and Geoffrey Thomas who will tell you what a difference the CIDP made to their lives. And their belief of how important it is that a program like CIDP exists.

Geoffrey Thomas

74. Mr Geoffrey Thomas is a 59 year old First Nations man with a Cognitive Impairment, depression, anxiety, post-traumatic stress disorder, and attention deficit disorder. Mr Thomas has given pre-recorded evidence which will be heard during this hearing. Across the course of four decades, Mr Thomas spent time in juvenile detention, adult prisons and many mental health hospitals on a voluntary and involuntary basis. He was last in prison in 2003. Despite these hard aspects of his life, Mr Thomas was able to qualify and work as a nurse. While he was in prison, Mr Thomas advocated for the rights of other prisoners.
75. In 2019 Mr Thomas was charged with offences. Through the CIDP, he was assisted by Intellectual Disability Rights Service. IDRS arranged an assessment by a neuropsychologist who confirmed his Cognitive Impairment. This formal assessment assisted Mr Thomas with his criminal charges, and also with his NDIS support. Through the CIDP, the initially serious charges were negotiated to a much less serious charge and a Good Behaviour Bond was imposed.
76. Mr Thomas has also had the support of stride Mental Health.
77. He is playing a positive role within the block of public housing flats he lives in and advancing his education.

78. We will now play a short extract from the evidence of Mr Thomas.
79. **GEOFFREY THOMAS EXTRACT:** Mr Thomas explains how the experience of going to Court was different when he had the support of the CIDP.

[Extract to be played]

... it was a whole different --- it was an absolute totally different perspective because people communicated from the minute we walked in the door, from my support worker to the solicitor, from the solicitor to the prosecution, from the prosecution to the magistrate. So everyone knew where we were at.

INTERVIEWER: Yeah.

MR THOMAS: Instead of they always knew and I was just sitting in the chair.

INTERVIEWER: And you were sitting there. I think in your statement you talk about Michael --- at the end of that court case, the outcome on the day, obviously, you were so stressed, but words were being spoken in the court that were just not computing with you and, at the end of the day, it was a good outcome and you said essentially to Michael, "What just happened?", and he explained to you what had happened.

MR THOMAS: Yeah.

INTERVIEWER: Whereas in the past, presumably, you got to the end of the day and if you were experiencing those sorts of experiences because of your disability, you would have either walked out of the court or you got taken back downstairs and out in a truck and you worked it out when you got back to prison.

MR THOMAS: Yeah.

INTERVIEWER: So is that how fundamental that support in court through CIDP has been?

MR THOMAS: Yeah. It went from --- like, hearing what the magistrate had to say and being taken down and then seeing a

solicitor for two minutes between bails going this is what just happened.

INTERVIEWER: Yeah.

MR THOMAS: Not understanding any of it and getting on the truck and then, like, reading whatever you got and going, "How do I work this out", and then realising it doesn't matter if you want to appeal because you'll spend more time waiting on remand before that so you just cop it anyway."

INTERVIEWER: Yeah, you cop it.

MR THOMAS: So the system is broken in that way, too. But on this day --- I think I wasn't --- I was overawed. I was flabbergasted. I was there --- I had witnessed something that was a good thing that had happened, involving several groups of people that were funded by the government. Now, I believe that that funding should be not only kept on board, but most probably it should --- further funding, they should look at that even harder because it will save money in the long run.

INTERVIEWER: Yeah.

MR THOMAS: Because if I had have got up and walked out ---

INTERVIEWER: Yeah.

MR THOMAS: --- then you've got police officers who will perform --- you've got ---

INTERVIEWER: A bench warrant.

MR THOMAS: You've got the potential for a violent confrontation with them because they've tracked you down, then I end up in hospital; I'm on remand. It costs like \$150,000 a year to keep someone in prison so it's not cheap.

INTERVIEWER: So the CIDP support, the funding for that, much less than all of that ---

MR THOMAS: Yeah.

INTERVIEWER: Kept you stable ---

MR THOMAS: Stable and on board and focused for the period of time that I had to go to court.

INTERVIEWER: Yeah.

MR THOMAS: --- and for the day-long episodes that we had to go

through.

INTERVIEWER: And it got to a neuropsychological report which was used in court, is that right, as well?

MR THOMAS: And that was a benefit even further past court. It was further useful with the NDIS.

INTERVIEWER: The NDIS, yeah.

Taylor Budin

80. Ms Taylor Budin is a 26 year old woman with Autism. Ms Budin has given pre-recorded evidence which will be heard during this hearing.
81. From a young age, Ms Budin wanted to work in disability services. At age 17, she commenced working and training in this area. At age 20, Ms Budin was convicted with an offence of violence. Although she was only sentenced to a good behaviour bond, the result of the conviction was that she lost her job in disability services. Ms Budin's felt that her life fell apart, and has conveyed to the Royal Commission that she was not proud of her actions during this time in her life. She was ultimately held in prison on remand for three months. This was her first and last time in prison. CIDP, working with Ms Budin's lawyer, helped arrange for suitable housing and documentation which allowed her to obtain bail. Whilst on bail, IDRS arranged for assessments of Ms Budin that were able to be used for both the criminal matter and to obtain NDIS support. This included Ms Budin being formally diagnosed with autism

for the first time. The steps that Ms Budin took with CIDP and IDRS support allowed her to receive a Community Corrections order rather than to be returned to prison.

82. Ms Budin has been working with IDRS since 2019 as part of the 'Making Rights Real Advisory Group'. She has also worked with NSW government agencies to give her experiences as a person with disability in the criminal justice system.
83. **TAYLOR BUDIN EXTRACT:** Ms Budin speaks of her belief of the ongoing need for a program like the CIDP.

[Extract to be played]

MS BUDIN: Give us funding, please. Well, we need something in the court systems because like where I can of --- sorry, just 'cause I'm answering. What I can't comprehend is why you get rid of something that was going so well.

INTERVIEWER: Yeah.

MS BUDIN: Because if I was in the prison system still, I wouldn't have this support now and I'd be sitting there screwed.

INTERVIEWER: Yeah.

MS BUDIN: And that worries me and that worries --- because how many other people are still in there that needs to be on the program?

INTERVIEWER: Yeah.

MS BUDIN: They could be out, not in.

INTERVIEWER: And they just don't know about it or the system just ---

MS BUDIN: And they just don't know about it, or it just doesn't exist. So, really, I really would like to get something back into the system.

INTERVIEWER: Yes.

MS BUDIN: It's not fair. There's a lot of people in there.

INTERVIEWER: Who just don't have the support.

MS BUDIN: Who just don't have the support or the advocacy.

INTERVIEWER: All right.

MS BUDIN: They're just getting pushed under the rug, it's another number.

Funding cancelled

84. As we have already noted, funding for the CIDP was not extended beyond 1 July 2020.

Indefinite detention

85. This hearing will consider the cases of two people who have been held in indefinite detention type arrangements for very long periods: One from NSW and one from the Northern Territory. Both involve First Nations people with a disability.
86. Melanie and Winmartie were both known to children's services from an early age, as children in need of care and protection. Both entered the criminal justice system as teenagers and both have been detained indefinitely since being found unfit to plead to charges of manslaughter.
87. Both case studies were brought to the attention of the DRC by their appointed guardians.
88. The main policy areas of interest to the two case studies are:

- (a) Cultural safety in forensic disability units;
- (b) Behaviour management and the use of restrictive practices, specifically seclusion and chemical restraint;
- (c) Access to meaningful activities or opportunities to build skills in forensic units - Greater emphasis should be placed on developing patients functional skills to support their reintegration into community;
- (d) Decision making and the voice of the person with disability;
- (e) Culturally appropriate accommodation and forensic units
- (f) Connection to country;
- (g) Role of guardians/family
- (h) Maintaining connection and communication between FDU and family/guardians;
- (i) Review mechanisms;
- (j) Transition planning and the challenges that arise when considering care in the community;

89. We will be examining what caused them to be placed in each setting, the conditions within which each of them is held, the types of restrictive practices that are engaged in their day to day management, the

objectives of treatment, risk assessment and risk management, transition planning, barriers to community living, the role of the guardian and what review mechanisms are in place for each of them. These cases will be confronting for many: the two individuals have engaged in seriously violent behaviour from time to time. Many will be unsympathetic to their plight. Others will be open to trying to understand how each came to be where they are, and want to know how we, as a society, can do better for them.

90. A non-publication order has been made in relation to Melanie, her biological mother, her former foster mother, and her victim.

91. A non-publication order has been made in relation to Winmartie.

...

92. The cases of Melanie and Winmartie are, unfortunately, not isolated cases. The evidence this commission will hear includes concerns expressed by experts and advocates that people are being held within prisons and/or forensic facilities in seclusion for extensive periods and in unsatisfactory conditions.

93. Another case that the commission has considered in the preparation for this hearing is that of a person in Queensland who I shall refer to as A. A, now aged 33 has had various diagnoses including the chromosomal disorder 47xyy. This disorder is said to occur in approximately 1 in 1,000

men who are usually unaware of the disorder. A has also been diagnosed with acquired brain injury, autism, oppositional disorder and his IQ has been recorded (in 1999) at 40. A has displayed very violent and aggressive and damaging behaviour over his life and has high criminogenic support needs. On 24 September 2012 he was found, by the Mental Health Court of Queensland, to be permanently unfit for trial and was transferred to the Forensic Disability Service in Wacol (he had previously been on a forensic order which had been revoked by the Queensland Mental Health Tribunal in 2010 with alternate procedures being put in place by the adult guardian).

94. The Forensic Disability Service (FDS) is a purpose built medium secure residential specialist rehabilitation facility. It is designed to provide support and care for a small number of individuals with intellectual or cognitive disability with complex needs who have been found not responsible for serious criminal offences because of their disability and who are subject to forensic orders under the Mental Health Act and who are detained for treatment or care in order to protect the community from the risk of harm considered to be posed by those individuals. These individuals are subject to forensic orders (disability) under the *Mental Health Act 2016*.

95. In March 2013 a review of his time at the Forensic Disability Service compiled for the Mental Health Review Tribunal stated that his time had had “no enduring improvement or reduction in his assaultive behaviour”. An assessment in August 2014 indicated that he was at a high risk of future serious offending.
96. On occasion, police have been requested to attend the FDS to assist with situations involving A when his behaviours presented an imminent or serious risk to the safety of staff or posed a self-harm or suicide risk to A himself when the risk could not be managed without additional assistance. On all occasions it was police who determined the appropriate response. They would sometimes attend with police dogs as a method of de-escalation of A’s behaviour– this includes a specific occasion in September 2018 when a police dog physically entered A’s seclusion unit. It is understood that this practice has now stopped.
97. The Queensland Ombudsman produced a report in August 2019. It found that A had been subjected to continuous seclusion orders for more than six years. That is the investigation found that he had been in seclusion for 99% of the time between his admission in September 2012 and 18 June 2018. The physical circumstances of seclusion are:

- a custom-built seclusion area with CCTV monitoring
- a living area
- a bedroom with shower and toilet; and
- a small concrete undercover yard.

98. He communicated with staff through a servery window, described as a narrow horizontal slot through which meals were passed to A.

99. The circumstances were held to be severe and concerning and gave rise to serious human rights concerns including indicators of systemic abuse.

100. The Qld Ombudsman found that organisational culture towards the use of restraints and seclusion can influence whether or not seclusion is used and that the use of seclusion can have traumatising and other harmful effects, both on the person secluded and staff.

101. The Ombudsman considered that a number of organisational factors may have influenced use of seclusion for A. Specifically, the FDS:

- did not question the use of seclusion as necessary;
- considered seclusion to be legitimate and effective;
- did not have good quality behaviour support plans that were well adopted and implemented; and

- normalised permanent seclusion, for example, by using the name House 3 and '[A's] room' rather than accurately describing the space as a seclusion area.

102. A number of factors suggested also that there had been considerable organisational cost associated with the use of seclusion for A, including financial costs, WorkCover claims, absenteeism, workplace-related volatility and staff turnover.

103. Overarching principles of human rights, promoting rehabilitation, meeting individual needs and goals, maintaining supportive relationships and community participation, and empowering a person to be involved in decision-making and exercising their rights are all principles that apply to the administration of the FD Act. Those principles were found, by the Ombudsman, not to have been promoted or applied in relation to the seclusion of A at the FDS.

Since this report, there have been developments and we are advised that most residents have now been able to proceed through the facility and transition to appropriate accommodation in the community. The 2018-2019 Annual Report of the Director of Forensic Disability' in Queensland included a pathways analysis of the enablers and barriers for the FDS clients who had transitioned from the service.

Professor James Ogloff

104. Professor Ogloff is a clinical and forensic psychologist who has worked in clinical and forensic psychology in a variety of settings for more than 35 years and published extensively in these areas. Professor Ogloff will speak to general issues experienced across jurisdictions with the management and treatment of individuals with disability and challenging behaviours. Professor Ogloff will speak to the case studies as being at the extreme end of the spectrum but identifies their usefulness to this Royal Commission as illustrating the issues for individuals at that end of the forensic spectrum. Professor Ogloff will speak to the importance of early identification of disability, risk assessment and risk management and the balancing of rights as between the individual patient and the protection of the staff and the broader community. He will speak to the perceptions of dangerousness and the impact that such perceptions have on staff. Professor Ogloff will identify forensic disability expertise and the need for a qualified and experienced workforce. Professor Ogloff will address transition planning and barriers and options available to forensic disability patients, including the service provider of last resort issue as between NDIS and individual States and Territories.

MELANIE CASE STUDY

DISPLAY PIXELATED PHOTO OF MELANIE

105. We turn now to the case study of Melanie. Melanie is a 38-year-old First Nations woman who is currently detained as an involuntary civil patient at the NSW Forensic Hospital. Melanie has received varying diagnoses over the course of her life, but is presently described as having an intellectual disability, borderline personality disorder and extreme self-harm behaviour on a background of severe childhood trauma.
106. Melanie was known to the Department of Child Safety since April 1986 and was taken into State care at the age of 5, after clear indications of sexual abuse of her. Documentary records indicate that Melanie experienced severe and prolonged childhood trauma including sexual and emotional abuse and neglect along with multiple placement changes - including living in a residential institution between the ages of 7 and 10. Melanie was also prescribed up to 50 mg of antipsychotic medication twice daily at the ages of 7 and 8.
107. At the ages of 15 and 17, Melanie engaged in two very serious acts of violence. The second of these acts took place in a juvenile detention centre where Melanie was held, during an activity, and resulted in the tragic death of a staff member. Soon afterwards, Melanie was

transferred to an adult prison. Melanie was found unfit to be tried in relation to both acts.

108. Notably, the State of NSW entered a plea of guilty to breach of an occupational health and safety duty. That plea acknowledged, in effect, that NSW should never have been permitted Melanie to be in that activity by which she had access to the weapon.
109. After a special hearing, the Supreme Court found that Melanie had committed the offence of malicious wounding (in relation to her mother) and manslaughter (in relation to the staff member). Terms of three years and ten years were imposed She has now been detained for over 20 years.
110. At the relevant time, under NSW law, a person found unfit to plead cannot be detained beyond their limiting term. (The legislation now permits increase of a limiting term by order of the Supreme Court.) A person may be released, or be subject to less stringent custody, before the expiration of their limiting term by order of the Mental Health Review Tribunal.
111. Melanie was detained in prison until 2011 at which time she was transferred to the Long Bay Forensic Hospital. Throughout her incarceration, Melanie has spent time in seclusion as she was

considered either a High Risk or Extreme High Risk inmate due to her varying, but often high, levels of violent and self-harming behaviour.

112. Following the expiration of her limiting term in 2012, Melanie has continued to be detained at the Forensic Hospital as a civil patient as it was considered that she required containment and it was determined that there was no alternative location that could adequately meet her needs.
113. Melanie's mental state and behaviour deteriorated over the course of 2012-2014 and she was moved to a special seclusion area within the Forensic Hospital. She remained in that seclusion environment almost constantly for seven years, sometimes spending more than 23 hours a day in her cell. This regime of seclusion ceased on 13 November 2020.
114. In 2006 a forensic psychiatrist described Melanie's conditions as "Dickensian". In 2017, that is more than 10 years later, the MHRT visited Melanie's rooms and said that, "the rooms were filthy and degrading" ... "the area was sub-standard and clearly not conducive to any form of recovery."
115. Melanie's treating psychiatrist has documented his concerns, eg in November 2018 that, "(Melanie's) placement and restrictive practices

are not clinically indicated and have not been sanctioned by me as her treating psychiatrist” and that the “lack of time out of seclusion is causing iatrogenic harm.”

116. While Melanie had sporadic contact with her biological and foster family when incarcerated, Melanie’s personal visits now are from a former patient of the Forensic Hospital.
117. In 2019, the Integrated Service Response (ISR), an initiative by NSW Health for people with multiple and complex needs, was working towards identifying appropriately secure and supportive accommodation in the community for Melanie. From mid-2020, a governance group in respect of Melanie was established.
118. Melanie’s story is a distressing one. It is troubling indeed that a woman is held in such an environment in Australia in 2020 with little apparent hope of improvement and release. It is more concerning that these conditions were presented and promoted as being ‘therapeutic’.
119. Witnesses who will be called to tell and explore Melanie’s story in this hearing are:
 - (a) First and most importantly Melanie herself – you will hear an audio-recording of a statement prepared by Melanie (facilitated by the NSW Public Guardian).

(b) In her own words Melanie says that she “was in seclusion for nearly 8 years – not one day of my life that I didn’t want to get out and have a life and be happy again on the ward... In Feb 2020 in a letter to the MHRT Melanie wrote “I deserve a chance on the outside, no-one will give me a go and I don’t understand why... I have days where I get so frustrated that I don’t see hope or light and I try and hurt myself or suicide because I am so frustrated. ... I don’t understand why Dr Riordan and Dr Ellis says I cannot go back to the ward because it’s too complicated.”

Megan Osborne

120. Megan Osborne is the NSW Public Guardian and has been in that role since 2019. The NSW Public Guardian has been the legal guardian of Melanie since 2011. Ms Osborne will describe the challenges that the Public Guardian has faced in improving the conditions of Melanie. She will also speak of the current attempts to secure NDIA funding for Melanie to live in the community.

Panel – Helen Seares & Todd Davis

121. Helen Seares and Todd Davis, from the Mental Health Advocacy Service at Legal Aid NSW will be giving evidence as a panel. Ms Seares (has been Melanie’s legal representative for several years) and

Mr Davis will speak to Melanie's circumstances and the broader systemic issues they have observed, including the fact that Melanie's story is not an isolated case.

Dr Daniel Riordan – Consultant Psychiatrist (in camera)

122. Dr Daniel Riordan is Melanie's treating consultant psychiatrist at the Forensic Hospital. Taking a trauma informed approach, his evidence will be heard in camera – that is, not publicly.

Brett Holmes – NSW NMU

123. Mr Holmes will speak to the tension between WHS considerations and Melanie's case. Mr Holmes considers that a reduction in the use of seclusion is possible with appropriate resourcing – especially the funding of suitable environments with adequate numbers of appropriately trained staff. He considers that many facilities are poorly designed and inadequately staffed. Training, education and support for forensic staff - issues with resourcing, lack of support, training/education will be explored during his oral evidence.

124. Mr Holmes considers that areas where improvements can be made are; mandatory enforceable staffing ratios at the Forensic Hospital; and an increase in skilled staff to address the staffing ratios and address

the risks present in what he describes as a, “volatile high risk environment.”

Dr David Manchester

125. Dr David Manchester, a clinical psychologist who was engaged by NSW Health in 2019 to provide a report about Melanie’s support needs. Dr Manchester will speak to Melanie’s support needs and her individual capacity to learn new things. He will address the impact of long term seclusion. And he will discuss a proposed way forward balancing safety concerns with best therapeutic practice.
126. Dr Manchester’s thesis includes that there is a need for trained positive behaviour support staff in forensic units, including culturally competent staff, as a core team to work with those patients who present with the most challenging behaviours and disabilities. These staff aim to reduce the use of long term seclusion and engage with patients to teach new skills which assist them to moderate their behavioural distress in response to identified triggers in a variety of settings. Ultimately his evidence is that it is clinical leadership that builds trust (in patients and staff) and effects lasting change and that all change takes time and consistent effort in order to become embedded within an organisation.

Dr Andrew Ellis and Gary Forrest

127. Dr Ellis is the Forensic Psychiatrist, Clinical Director & Medical Superintendent, Justice Health and Forensic Mental Health Network. Mr Gary Forrest, is the Chief Executive, of that Network. The evidence of Dr Ellis and Mr Forrest will include the lengthy period of time Melanie has been in seclusion, and recent changes to her accommodation and treatment.

“Winmartie” Case Study

128. Winmartie is a 30-year-old First Nations man who is currently detained under a custodial supervision order at the Alice Springs Secure Care Facility. Winmartie experienced severe childhood epilepsy and continues to have seizures. He also has been diagnosed with an Acquired Brain Injury (ABI) and an intellectual disability. (DISPLAY ARTWORK)

129. Like Melanie, Winmartie experienced significant childhood abuse and trauma including isolation and bullying by members of his community. For example, Winmartie was referred to as “mad Winmartie” when he was a young child and on one occasion a group of adults and children threw rocks at him.

130. At the age of 16, Winmartie fatally stabbed his uncle, who at that time was his sole carer, in their home. Winmartie and his uncle were the

only people present in the home at the time and his uncle's body was not found until the following day.

131. Winmartie was initially held in juvenile detention, and transferred to adult custody approximately two years later, after he turned 18. On 17 November 2009, the NT Supreme Court found that Winmartie was not fit to plead. At the conclusion of a special hearing, a jury returned a qualified verdict of guilty of manslaughter by reason of diminished responsibility and an order was made by the Supreme Court that he be subject to a custodial supervision order.
132. Unlike Melanie, Winmartie's custodial supervision order was for an indefinite period of time, as is permitted by NT law. The Supreme Court ordered annual reports regarding the "treatment and management of [Winmartie's] mental impairment" and a mandatory review of the order itself no later than 8 years and 11 months from the date of the order.
133. Winmartie was incarcerated in an adult prison until 2018, at which time he was transferred to the Alice Springs Secure Care Facility. In 2014, the Australian Human Rights Commissioner released a report that described Winmartie as having been "subject to the most severe treatment while in prison, including frequent use of physical,

mechanical and chemical restraints, seclusion, and shackles when outside his cell”.

134. While in the Secure Care Facility, Winmartie has had increased access to his family and community in Titjikala, which is approximately 120km south of Alice Springs. This has been generally positive. However, his guardians (advocate Patrick McGee and elder Aunty Margret Campbell) are concerned that Winmartie continues to be overmedicated and isolated, particularly during the COVID-19 pandemic, and that the arrangements for him at the Secure Care Facility are not culturally appropriate or therapeutic. They wish for Winmartie to have supported accommodation on the edge of Alice Springs where they would be able to visit him.

135. Winmartie’s voice will be heard by a visual montage of photographs of Winmartie on country and by a number of photographs of Winmartie’s artwork of which he is very proud;

Aunty Margret Campbell & Lorelle Stoekel will give evidence together.

136. **Aunty Margret Campbell**, is an elder in Winmartie’s community and she is one of his two legal guardians. Aunty Margret will give her evidence in her first language, Pitjantjatjara. Aunty will speak to the importance and benefits of connection to country, family and

community for First Nations people and specifically for Winmartie. She will also describe how the family has successfully managed Winmartie when he visits ancestral lands. Aunty Margret will tell the Commission about the lack of Winmartie's access to professional help when he was young and the difficulties Aunty Margret encountered when she sought information about his arrest and when she attempted to visit him.

137. She will speak to her concerns of lack of cultural competency and safety exercised by staff at FDU when dealing with Winmartie. She will explain what the indefinite nature of Winmartie's detention and barriers to his eventual pathway out of the FDU mean to the family and community.
138. **Lorelle Stoeckel**, is Aunty Margret's bush daughter. Winmartie stays with Lorelle and Aunty Margret when he returns home to the community.
139. Her evidence will focus on the limited consultation that Northern Territory agencies have provided Aunty Margret regarding Winmartie's care and the concerns of both women regarding the quality of Winmartie's care, including but not limited to cultural inappropriateness and the misuse of restrictive practices.

140. Lorelle is Winmartie's NDIS coordinator in Alice Springs, she will speak to his current level of support and what service supports have been engaged for Winmartie. She will tell of the current reduction with the NDIS support package. The requirement for a transition plan for Winmartie and the challenges in engaging with the Forensic Disability Unit will be described.

Patrick McGee

141. Patrick McGee, is an advocate in the disability sector and Winmartie's other legal guardian. Mr McGee has known Winmartie and his family for over 20 years. His evidence will address the limited consultation by Northern Territory agencies concerning Winmartie's accommodation, treatment and care arrangements.

142. In this case study, we will also hear from Mr Tom Langcake, Direct Services Manager, Forensic Disability Unit, Northern Territory Department of Health, about a variety of matters concerning the manner of detention of Winmartie, his treatment and issues relating to transition.

143. We will also hear from Professor Catherine Stoddart, who held the position of Chief Executive, Department of health up until January of this year, and Cecelia Gore, Senior Director, Mental Health. Alcohol

and Other Drugs Branch, Health System, Policy and Strategy, Department of Health, regarding systemic issues within the Northern Territory.

NDIS v Service Provision of the State

144. Some of the evidence in this hearing speaks of people's experiences in trying to get services from States or through the NDIS and the sense by some of responsibility being shuffled between the two.
145. We note that there will be a second part of this hearing, at a later time, which will enable the States and the NDIA to be heard on those issues.

No Dissonance between the rights of people with disability and community safety

146. To realise genuinely inclusive participation in society for people with disability, factors which are contributing to the overrepresentation of people with disability need to be identified, and addressed.
147. Attitude seems a logical place to start: the need to create a culture where it is recognised that there is no dissonance between the human rights of people with disability to receive support and treatment, and the safety of the community: they are, in fact, complementary and supportive of each other. It is expected that the evidence in this

hearing will illuminate this truism and begin to explore ways in which we can improve.

148. We start this hearing's journey after the morning tea break with the case of Melanie – indeed with the voice of Melanie.