DII Podcast S2E5 - Young Aboriginal people with disability and the criminal justice system

**Isabella Burton-Clark**

Welcome to the UNSW Disability Innovation Institute podcast, where we discuss the work of the Institute and other issues related to disability inclusive research.

**Jackie Leach Scully**

Hello, I'm Jackie Leach Scully, the Director of UNSW's Disability Innovation Institute. And in this month's podcast, we're going to be focusing on the challenges faced by Aboriginal young people with disability in the criminal justice system. I'd like to start briefly by acknowledging the traditional custodians of the land where I am, which is the Cammeraygal people, and I'd like to pay my respects to Elders past and present and to any Aboriginal and Torres Strait Island people listening in today. Joining us to discuss these issues are Peta MacGillivray and Daniel Daylight. Peter is a Kalkutungu and South Sea Islander lawyer and researcher who also works at the Yuwaya Ngarra-li centre based at UNSW. Peta's worked as a researcher in a whole range of criminology, legal services and community development projects, and she's going to say a little more about those in a moment. She is currently completing a PhD at UNSW entitled, 'Children and young people with mental and cognitive impairment in the juvenile justice system in New South Wales'. Daniel Daylight is a Gamilaraay man who also has family ties to the Gubi Gubi nation in Queensland. He's spent his life working in the youth justice sector, and is currently part of Just Reinvest New South Wales at Mount Druitt. So first of all, welcome to both of you. And can I turn, perhaps first to you, Peta, and ask you to say a little bit more about yourself, and how you started working together.

**Peta MacGillivray**

Thanks so much, Jackie. I'm joining this afternoon from Bedegal country and pay my respects to Bedegal Elders past and present. I have been working at UNSW on and off for a long time. I moved to Sydney to do my undergraduate law degree at UNSW at 17. And I've been on Gadigal and Bedegal country ever since, although I do go home to Rocky quite a lot. And Dan and I first began working together in the Youth Koori Court, Parramatta, where I was in the Children's Civil Law Service at Legal Aid New South Wales, I was practicing as a solicitor there. And the Civil Law Service was a unique model of children's lawyers who had backgrounds in criminal law work with young people, as well as civil law advocacy. And so we worked in a holistic model with young people as their direct legal representatives. And our clients were young people experiencing really complex social disadvantage, usually, because they were young people who were in the care of the minister and not getting anywhere near the support, that they were entitled to, being in the care of the minister, but also finding themselves in the children's court list, with high contact with police, often because they're, for the clients that I had with disability--and I had a lot of them--it was often because their disability needs weren't being met while they're in state care. So lots of issues that I'd see with young people in residential care. So group homes, and the police being used as a behaviour management response, with a lack of specialist or properly trauma-informed or therapeutic-informed practice or models of care for young people. So Dan, and I worked really closely in the Youth Koori Court and I'll pass to Dan to talk about that time.

**Daniel Daylight**

Thanks, Pete. Yeah, so I've grown up down here my whole life on Wangal, Gadigal, Bideagal land in the city, but I'm currently--in the city of Sydney, I should say. I'm currently coming from Dharug land out in Mount Druitt, in Emerton actually, and yeah, I pay my respect to the Elders out here, past, present and all the young ones that are emerging as well. Like Pete, a lot of my family come from Queensland and the north, northern New South Wales, northwestern New South Wales, but my parents settled down in Sydney. So I was raised down here, was raised around the kind of, you know, around the struggle, raised around up in Redfern AMS, the co-op of medical service in Redfern. And so I saw, like, a lot of people making change. And so later on when I stumbled into a job at Parramatta Children's Court, it was kind of really fulfilling to be able to help people, and yeah, I was there when we developed, started the Youth Koori Court, which is where I met Pete. I remember her saying, 'Are you related to Daylights from Rockhampton?', I said my dad's Daylight from Rockhampton, we realised we're related. And then we worked together for a number of years, you know, and my kind of first interactions with kind of the disability sector was at the Children's Court where we had that kind of crossover between ADAC and the NDIS. And a bunch of different things happened around those times just, I think that was just pre, we started the Youth Koori Court to kind of, all the services that we'd known that we used to refer people to or that supported people, they all changed, and it was kind of this up in the air space. But then I left the Children's Court in 2017. And I've worked in community since. I was on the board, the exec, of Just Reinvest for four years. But while I was working down at Weave in Waterloo, managing a program that worked with 10 to 30 year olds involved in the criminal justice system. And now I'm back out here in Mount Druitt as a manager for Just Reinvest out here, so trying to get justice reinvestment happening in Mount Druitt. It's already been happening, but like trying to establish it out here. So, that's me, I'll hand it back.

**Jackie Leach Scully**

Thanks so much. And thank you for that background and introduction. I've got a number of questions, and the conversation could also go in all sorts of directions. But I think as we're focusing on young people, young Aboriginal people with disability, I don't think we need go back over the criminal justice system's general inadequacies about inability to support young people. I wondered if you could say something about what might be special, what are the unique challenges that Aboriginal young people with disability face in the criminal justice system?

**Peta MacGillivray**

Thanks, Jackie. That's a great question. And I think from my experience of working with my clients at Legal Aid, there are, there are kind of system-created challenges that are faced and experienced by Aboriginal young people with disability. And those, those system things include the intensity of the care protection removal process, and the numbers of Aboriginal young people who are taken into state care, and the proportion of those young people that have disability. So it's a matter of just the sheer numbers of Aboriginal young people with disability who find themselves in a system which is not equipped to properly provide what they need. But then there's also the uniqueness of the experience of Aboriginal people and communities and young people, which is the strengths of communities and families. And that that's a real protective factor. And I think, for Daniel and I, our movement from working within the criminal justice system back into community spaces recognises that, and to kind of build responses and alternatives in the community, because there's not enough of that happening, which is culturally connected, and which is specific to the needs of Aboriginal young people.

**Daniel Daylight**

I agree with everything Pete said, and it's just, for me, it was always the criminal justice system as a whole kind of strips us off all the protective factors that we have, it strips us away from our community, takes us away from our culture, takes us away from so many of those protective things that make us who we are. But it also takes us away from those people existing in those things that are our strongest advocate. So, our strongest advocates as Aboriginal people have always been, is our family, if it's not our family then it's our mob. The way that the system kind of works at the moment is to work, both systems, all systems, but the child protection system that Pete talked about and the criminal justice system, both remove us from all the people who advocate for us. And I really found that, and to kind of Pete's point about that's why we're doing this work back in communities now, is that you need such a strong advocate in that disability space, because it's such a specialised sector that you don't just run into normally, and Pete and UNSW, and I will not remember the name, but did a very great piece of research around all the drivers that get people with disabilities and intellectual disabilities into the justice system. And still, none of those things have changed since that time, you know, a lot of things that were driving people into that situation still happen. And for our, for me, it's always been mob, always advocating for us. And so I see that as a real thing that's absent from a lot of this space at the moment. The stuff that happens in the criminal justice system, so many of the people who are involved in the criminal, like inside, have some type of cognitive behavioural thing or intellectual disabilities and, or, or hearing problems. And it's just everyone just assumes they are their crimes, and they forget that they are people. And those people need support. And so I think that's what's missing, and I'm kind of getting lost a bit, so I'll hand back to Pete.

**Peta MacGillivray**

No, thanks, Dan. I think, the research that we did, the Indigenous Australians with mental health disorders and cognitive disabilities in the criminal justice system research, that was, for me, as the starting point for my work and advocacy in this area, because we could see that from a very early age, Aboriginal young people who would become adults in the adult system had earlier and more intense contact with the police than non-Indigenous people with similar diagnoses. So our kids are, you know, coming into contact with the police as early as eight, and that that trajectory is entirely predictable, and entirely preventable. But as you say, Dan, the advocacy piece is really lacking in this area for Aboriginal young people. And it's because the Children's Court processes are so fast and overwhelming, it's pretty much a sausage factory that for children with these disability needs, they're completely lost and erased in that process. And that was one of the things that I noticed the most working in the Children's Court was, and I don't want to spend too much time on the what's going wrong in that system, because we'd be here all day. But there's such there is a such a absolute lack of understanding or recognition of the disability needs of young people in that jurisdiction. And that goes for Indigenous and non-Indigenous kids. But, you know, returning to the point that I made at the beginning that just sheer numbers of Aboriginal young people makes it a crisis.

**Jackie Leach Scully**

It sounds like what you're saying is that one factor is the automatic response to an Aboriginal kid in trouble is to lift them up out of the community and put them somewhere else. And it sounds like you're saying that that just detaches them from the potential sources of strength and healing and, and resilience.

**Peta MacGillivray**

That's right, Jackie, and it's to, you know, just be explicit about it. It's the institutional racism of the systems that we are trying to protect our kids from every day, and the racism behind the logics and the rationales of what it means to keep kids safe and what it means to make a difference just don't work for us. And this is the structural change that's required that will benefit everyone, but especially young people with disability. It's a huge problem. And I, you know, we think about the Family is Culture report, which was the inquiry into the disproportionate numbers of Indigenous children in the care and protection system in New South Wales. You know, the key finding of that research that was led by an independent team of researchers was that the system is actually causing the disproportionate numbers of Aboriginal young people. And that's quite a radical finding, I think. And we're still waiting for the New South Wales Government to implement the recommendations to change that. But one of the key recommendations is the structural reform, and I don't think we'll make much of a difference until that happens.

**Daniel Daylight**

That's the whole thing about it, we grow up distrusting the system, for very good reasons, that Pete's just mentioned, that, that structural racism that's affected our families forever. You know, I mean, like, part of the reason I'm down in Sydney, and we live down here is, you know, my dad was in a home up in Rockhampton, and for him to make a better life, he joined the Navy to leave his town and his family and everything else. He then met my mum and stayed down here, but some of that stuff, that's what happens to us. It's just like, they never, we never get funded to to implement our own solutions. So we oftentimes have our kids getting into trouble, they get moved away. What I generally find, and in custody especially, is that it's just a pause button, it's nothing ever actually happens there. You press pause on someone's life, and then they're out six months later, two weeks later, and they go back to the exact same environment and just press play again. And it just runs that way, you know, it just continues on that path. And that happens so often with people with disabilities in the system, because they don't generally, even the implement-- I can very clearly remember like, boys in custody, they had very bad treatment happening to them in juvenile custody. And some of the boys, the advocacy that they had by ringing the ombudsman and being able to use their phone calls, that was great, like the way they did it, the next kind of generation of boys that had to go through that same treatment, most of them had intellectual disabilities, they didn't have the capacity to ring the ombudsman 249 times and things that had happened with the kids two years before, you know, so they didn't have that advocate inside, and then we don't trust the system. So even in terms of from what I've seen, from all the disability infrastructure that's in place that I've had to deal with, everything is so systemic, everything is is a system, very few of our community organisations that we trust that actually the people delivering those services. So again, we won't engage in those services. We won't engage in the NDIS like someone else will because the NDIS is still a government thing. Why are we gonna go to them for help, because every time we go to the government for help they remove our kids, every time we go to the government for help, something negative happens to us. The whole thing, like Pete said, the cards are stacked against us from the moment we're born as an Aboriginal person. All the statistics tell us that so why would it be any different for an Aboriginal young person with a disability, you know, it's just even more cards stacked against us, the odds are stacked against us.

**Jackie Leach Scully**

So, you have both disablism, or ableism, and racism, intersecting and compounding each other. But also, as you said, I think, it's not just additive. It's just not one on top of the other, but there's also there, there are unique issues there that are not being addressed. Just before we move on, and I'm not backing away from the racism angle, but how much of this is also because of under-resourcing of more remote regions? That must come into it as well. I'm not sure whether you're talking about the same sorts of problems playing out in better resourced urban areas, for example, or whether there is in fact a difference.

**Peta MacGillivray**

Excellent question, Jackie. It's true that community-based solutions, particularly led by Aboriginal community-controlled organisations, and groups, and communities of informal arrangements are not resourced to do what they need to. But this is a problem that we see all across the community sector and the not-for-profit sector, where the organisations are competing constantly in a landscape of under-resourcing. And from a structural systems point of view, you only have to look at the New South Wales Government investment in the criminal justice system, billions of dollars to build new prisons and police, expand police stations. And then you have tiny little organisations like Walgett Aboriginal Medical Service and Redfern Aboriginal Medical Service, which are facing competition from ever-expanding government services, which, you know, as Daniel said, are not always the service of choice for Aboriginal people and communities. And over decades, that under-resourcing, that starving the community sector of resourcing, it creates a really difficult environment for people to do good work. So we have, you know, huge workforce challenges in terms of attracting people back to the community sector to do that work, because people are going to go to work for government, some of us return, like Daniel and I, but it is, it's a huge challenge. And for Aboriginal community-controlled organisations, it's a constant one. And one of the other big challenges is the procurement processes. So often you've got, and this is both in urban and metro centres and regional and remote communities, where big NGOs are resourced by government to deliver services, effectively cutting out the community-controlled organisations that know community so deeply and intimately and have the relationships to actually make those services effective, to actually see the outcomes that community want to see. And I think Daniel would have that perspective, perhaps, from working at Weave, which is a community-based organisation that's independent, and now in Mount Druitt, doing the just reinvestment work, which is, you know, a significant investment in doing things differently. And in the Yuwaya Ngarra-li partnership, similarly, we do lots of work to elevate the significance of Aboriginal community-controlled organisations like the Dharriwaa Elders Group and the Aboriginal Medical Service who are not leaving their communities. These are Aboriginal community-controlled organisations that are decades established, WAMS's 30 years, the Dharriwaa Elders Group 20 years, they're sticking around while workforces will come and go from Walgett, workforces will come and go from Mount Druitt, but the community's there all the time, and we're trying to see the sustainability of those communities through investing in and properly resourcing them to do this work.

**Daniel Daylight**

Yeah, we have two of our young people that work with us out in Mount Druitt, Isaiah Sines and Terleaha Williams, wrote an article last year on raising the age of criminal responsibility, in the Herald. But one of the points that they make, you know, was just like the state government here, in New South Wales alone, spends 3.7 billion on what they call the Stronger Communities cluster, or whatever it is, which is all the justice things Pete's talking about, but minus the police, so it's probably closer to five billion dollars. And if you ask any Aboriginal person whether any of that money has gone towards strengthening our community, the answer's probably no, that that money's been spent to control us, or split our communities apart, a lot of the time. So, 3.7 billion: if a percentage of that was given to the community to control in Walgett, in Mount Druitt, in Kempsey, in Rockhampton, in Woorabinda, no matter where it is, if the community had the say-so on how that money was spent, you would actually see some changes to the, you know, the negative data that's always put on us, you know, our criminal over-representation just continues to grow higher every year, you know, we're close to 30% now, I think, of the men's prison population here in New South Wales, over 50% of the juvenile incarceration rate at the moment, still, you know what I mean, despite all this money, and to Pete's point, that that money has made bigger NGOs, it's made a lot of bureaucrats rich, it hasn't helped our community. And I don't understand why we continue to do that when it isn't helping. And that's where an issue like disabilities gets left out. Because people go, 'Well, we're giving this money. We're doing this criminal justice stuff. So we're just going to pick one topic'. And so in a town, we're going to give money for family violence. And it's like, do you not understand the drivers, so why people are getting charged with family violence, or not understand how that's affecting out-of-home care, and how that's affecting trauma? That's affecting disabilities, because of injuries that are sustained. Community understands that because community lives that every day, and so we're in the best place to be responsive to that. And so it's all interconnected, as you said, those two drivers. Some people can be naive and say 'It has nothing to do with race, it has nothing to do with race', you know, just oversight. But for us in the community, we know it's about race, because we know the difference between us and what other people get. Your question about remote places? Mount Druitt is in Western Sydney, the state government probably has a minister for Western Sydney at the moment. There's like three Aboriginal community-controlled health services in Mount Druitt. None are funded to work with young people. There's over 3,000 Aboriginal young people in Mount Druitt. Pete can tell this from her days at the Children's Court, you look and you go, 'Why and how does this exist?' I was in Walgett last year, sorry, start of this year, with Kobie Dee, a rapper, when he was doing a concert. The amount of Aboriginal young people that exist in that small town... like, I don't think people understand that. I never understood until I saw it, like oh, that many young people here, and still we don't invest in those young people. And then we wonder why in 20 years time, nothing's changed. And, you know, I think we as a people just get left out of decision making. And as a consequence of that, our people that are living with disabilities get left out of those too.

**Jackie Leach Scully**

That's fascinating and depressing, as well. As a non-Australian coming in only a few years ago, from the UK, the thing that struck me about the systems and the relationship between government systems and Aboriginal communities, and particularly young Aboriginal people with disability, was that sense of almost despair. On both sides, really, I heard people saying, as you've just said, Dan, 'You've put in so much money, so many millions, and nothing much has changed. There have been so many programs, nothing much has changed. Why hasn't it changed?' It sounds like what you're saying is that there's a kind of single-track mentality of putting money into particular systems, but not looking at what you're describing more as a kind of ecosystem of the community, looking at it holistically, rather than saying, 'Oh, here's an issue area. Let's put, pour a lot of money into that issue area.' Does that sound something like what you're experiencing?

**Peta MacGillivray**

That's, that's exactly it. One of the things that we try to elevate and talk about, and it's actually a privilege to be working with any Aboriginal community-controlled organisation in a context where you get to listen and learn from community about Language and culture and country, because that is all such a special and important and valuable source of strength for Aboriginal young people. And in the work that we're doing in the Yuwaya Ngarra-li partnership, I'm the Youth and Legal Advisor in the Yuwaya Ngarra-li team, working with the Elders Group. And they identified very early in the partnership that young people, if young people in Walgett were going to have thriving lives, a holistic approach to building at a community level, at a family level, at a structural level, what young people needed to achieve that was what needed to happen. And current approaches to doing that by government was not working. And Aboriginal community-controlled organisations need to be backed up and supported by the powerful, politically or economically or institutionally, to achieve those things.

**Daniel Daylight**

I think that that despair question is something you can very, like that you're just reading the data and just following it on that level, I can get where you get it, but when you work with our young people, when you work with our old people who've been doing this work for a long time, and you understand that it may be hard, but it's meaningful, and it makes a change. And one of the young people that we referenced, Isaiah, you know, for both me and Pete, you put energy and something into a young person and you watch them grow, and then you're incredibly proud, so you get a lot out of this work, you know, and that's kind of given to you by community and those young people. Because this is the thing is, like, imagine what the stats would be like if we weren't doing this work. You know what I mean? It's not like this work is a failure if no-one supports it. Communities are going to do this work with resources or without resources. The question really is, what would happen if you appropriately resourced the community to respond to community needs? And that's all I think any of us ever ask. There's a very clear answer, like people go, 'What's one thing?' and like, well give us our land back. Because if we have our land back, we can solve any of this stuff, because land is the most valuable thing in this country, you know, but we're starting from a point where we've lost our birthright, what should have been ours, we've lost our land. So we have to start again. And we've been starting again for generations on generations without-- our land keeps getting given to miners and others as well, but that's the thing, like, the resourcing as a community, the love is there, the knowledge is there, if the resourcing ever comes to match those two things, we can start really getting on top of this stuff ASAP. Because I've seen no money being invested in something, but someone's just putting their heart and soul into something, and it's changed the community. So if we can get some money that goes along with that, the change that will come will be instantaneous. And it might take generations for us to trust certain things in this country. But you know, we will start on that path pretty quickly once we're given control over our destiny.

**Peta MacGillivray**

And if it's not enough morally, to have Indigenous communities self-determining their futures and their solutions, the strength of Aboriginal community-controlled organisations and community-based organisations generally, is the respect and compassion and the way in which people who are experiencing these oppressive systems are actually elevated to have their voices heard and to be listened to, and to inform all of the work that's done. And that is something that just doesn't happen in a lot of these other system's approaches to solving these problems. It's bringing the humanness back to the work. And I think about some of the shared clients that Daniel and I had in the Children's Court, and Isaiah is one incredible young man who we worked with, and is now doing incredible work in Mount Druitt. And Isaiah's story is powerful, because it shows the time that is required to be working with young people for the outcomes that we want to see. And that takes resourcing. So much of it was done by Daniel unpaid and overtime, I remember, we all worked weekends for those kids in Mount Druitt and Western Sydney. But that's what you've got to do. And I feel like everybody needs to be challenged to do the same. But it can be made easier with skin in the game from everybody.

**Jackie Leach Scully**

Thank you so much for that. I think that's actually a really positive note on which to start wrapping up. I wondered if there's anything, finally, that you wanted to say about the work that each of you is actively doing now? Where are the growth points that you're seeing in the work that you're doing now in Walgett and Mount Druitt?

**Peta MacGillivray**

Yeah, great question. From my perspective, Yuwaya Ngarra-li is one of lots of work that's happening around the country right now, which puts power back into the hands of community and into the hands of Aboriginal community-controlled organisations. And I think, you know, there's an appetite to listen to community-controlled organisations, and to say, particularly from government and other NGOs, recognising that knowledge and experience has been really important, but recognition is not enough. There needs to be a real transfer of power. There needs to be a real resourcing of organisations and institutions and other civil society actors to actually contribute something tangibly useful to help capacity build in this area. So if little Aboriginal community-controlled organisations aren't equipped with the IT that they need, with the digital capacity that they need, the infrastructure that they need, the workforce that they need, then we're really setting the sector up to be increasing even more pressure. So I think it's one thing for us to be in the community sector advocating for more community-based alternatives. But we also need to have an eye on how are we building that? And then what still needs to be built? That's our focus in the Yuwaya Ngarra-li partnership, as we're giving primacy to Aboriginal community-controlled organisations, how do we collaborate to create new and innovative solutions together as independent organisations. And I'm really excited by another systemic solution coming from Aboriginal people. We invented the Aboriginal Medical Service, which became the model for community-based health service provision. We invented Aboriginal legal services, which was the model for Legal Aid, which you know, all people can access now. So I think similarly in the disability space, I think that this is, an innovation is going to come from Aboriginal communities here as well.

**Daniel Daylight**

In Mount Druitt, we're the third justice reinvestment site, kind of, with Just Reinvest New South Wales. There was Bourke, with Maranguka, its own organisation that's incorporated up there now. And those other two sites at the moment are Mount Druitt and Moree, and I'm incredibly happy to be back out here, Pete knows how much time and effort and tears and blood have gone in to building some of the relationships with some of the young people out here and their families. I'm glad to be back out here. And again, we're starting from scratch a little bit, only in terms of some of the data and collecting all that kind of stuff. We're not starting from scratch in terms of the movement out here, you know, Western Sydney's always been involved in our movement to kind of better our path as Aboriginal people. We're being led often out here by our young people, our young people out here are amazing. We've been working with a lot of young people out here the last few years to create a resource called Mounty Yarns, which we'll be launching in March next year, which is the lived experience of Aboriginal people in the criminal justice system, especially their mental health, and the, kind of, the drivers that kind of got them there, you know, so we'll have a written resource and a video resource, and maybe a podcast, I might need your skills to help cut it up. We have a lot of information out here about how the system isn't working, you've also got solutions that our young people out here have come up with, and not necessarily for themselves, but for the next generation, who are their kids, their nieces, their nephews, who they don't want to see have to go through what they went through. And so I'm incredibly proud to work with those young people who will be the change, and who already are the change, actually. That's what we're doing out here in Mount Druitt, you know. To Pete's point before about the government stuff, both me and Pete worked really hard for the Youth Koori Court, you know, like to set it up and, and get it going. And then at a certain point, I made the decision that the courts are one thing and making a culturally-appropriate court is one thing, but if I'm going to be spending my time crying and laughing, and everything that goes along with this work, then I'd prefer it to be something where we make our communities culturally safe. So we're not having our kids go to court to get the support that they need. And kids shouldn't have to act up to get support. Any person in our community, which is our community way of doing things, and to Pete's point about the AMS and the ALS, they come from the sense that we look after each other, and our young people shouldn't have to play up, shouldn't have to do certain things, to get support. So, our young people, or any person in our community, should get support when they need support. That's what we're trying to do out here. It's going to be a big job, Mount Druitt's a big place and a unique place. But I'm happy to be out here.

**Jackie Leach Scully**

Thank you, both of you, for being with us today in giving us that insight into the work that you do and the communities with whom you're doing it, and I hope at some point in the future, we'll hear more from you and hear more about the progress of your work there. Thank you.

**Peta MacGillivray**

Thanks, Jackie.

**Daniel Daylight**

Thank you.

**Isabella Burton-Clark**

Thank you for listening to the UNSW Disability Innovation Institute podcast. The podcast is hosted by the Institute's Director, Professor Jackie Leach Scully, and produced by me, Isabella Burton-Clark. We would like to thank our guests for their time and insight. You can find out more about the Institute and subscribe to our newsletter at disabilityinnovation.unsw.edu.au. You can also find further information about the topics discussed in the podcast on our website and in the show notes.