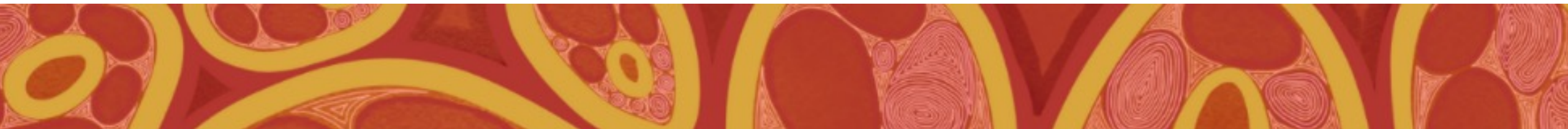


# 10861NAT Diploma of Aboriginal and Torres Strait Islander Legal Advocacy

## Conflict & Mediation

**NAT10861006 Ensure access and equity with Aboriginal and Torres Strait Islander clients in the legal system**

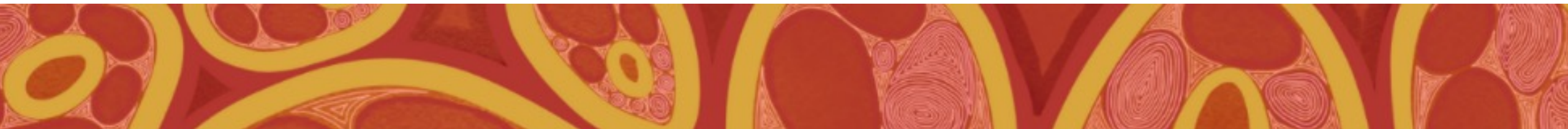


# Acknowledgement of Country

We acknowledge the traditional owners of the land on which Tranby stands, the Gadigal people of the Eora nation. We pay our respects to their Elders both past and present, who remain the traditional knowledge holders of this land.



We proudly extend this respect to all current and emerging leaders around Australia, for they hold the memories, the traditions, the culture and the future of their people.



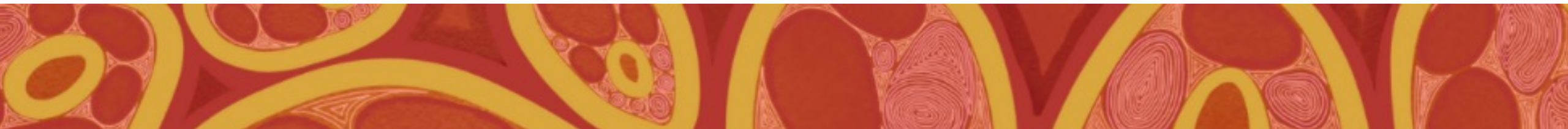
# Ensuring Access & Equity

This unit describes the performance outcomes, skills and knowledge required to promote fair and equal access to legal services and hearings for Indigenous Australians in need of legal assistance, including recognizing and responding to those with disabilities, mental health, alcohol and other drug issues.



# Ensuring Access & Equity

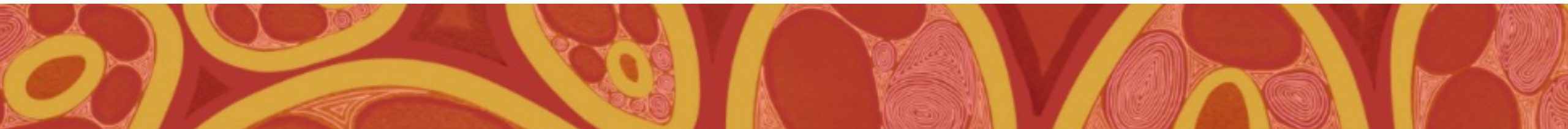
- There is increasing recognition in courts and in other parts of the justice system that legal processes have failed to take into account the cultural background and rehabilitation needs of Indigenous peoples.
- Indeed, arguably legal processes have compounded social and behavioural problems confronting Indigenous people in the justice system and promoted distrust as to its fairness and capacity to address their problems



# Ensuring Access & Equity

## ➤ **Barriers to Accessing the Justice System**

- In its report on public consultations for the same project, the Law and Justice Foundation identified the following barriers confronting Indigenous people in accessing legal aid services:
  - a reluctance to involve outsiders in matters that are considered private;
  - a lack of awareness of Indigenous people of the scope and ability of the law to resolve certain types of problems;
  - the limited ability of the law and traditional legal approaches to resolve problems that in many cases involve not just legal but also significant political, historical and cultural issues;
  - the reliance on documentary evidence to substantiate legal claims and its reluctance to accept or rely on anecdotal or oral evidence by Aboriginal people;
  - long term distrust of and previous negative experience with the legal system;
  - the formality of the legal system and its services;
  - lack of cultural awareness, sensitivity and compassion among justice system staff and legal service providers;

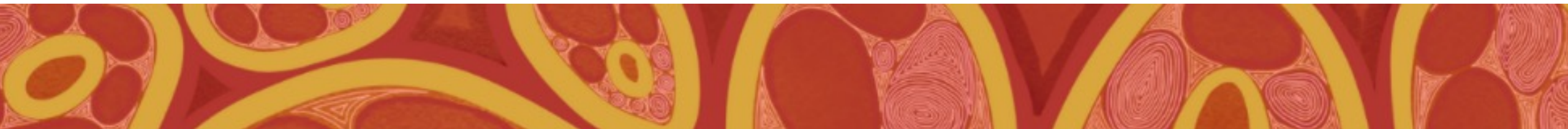




# Ensuring Access & Equity

## ➤ **Barriers to Accessing the Justice System (cont.)**

- lack of confidence in confidentiality, support and empathy in accessing Legal Aid NSW services;
- lack of Aboriginal personnel;
- lack of relationship between Legal Aid offices and local Aboriginal communities;
- intimidation in approaching legal services;
- lack of awareness of the services of Legal Aid NSW;
- the need to book Legal Aid services;
- location of Legal Aid offices;
- and lack of public transport to Legal Aid's offices.



# Ensuring Access & Equity

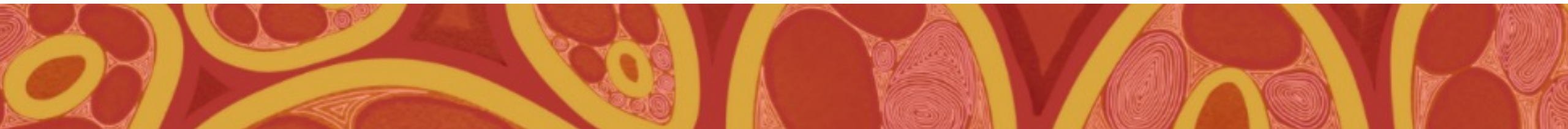
- Despite only making up 3% of the Australian population, Aboriginal and Torres Strait Islander people make up 28% of the adult-prison population. These statistics continue to impact on Aboriginal communities throughout NSW and ACT.
- <https://www.alsnswact.org.au/about#:~:text=The%20Aboriginal%20Legal%20Service%20opened,to%20rule%20over%20our%20communities>



# Ensuring Access & Equity

## ➤ History of Customary Law

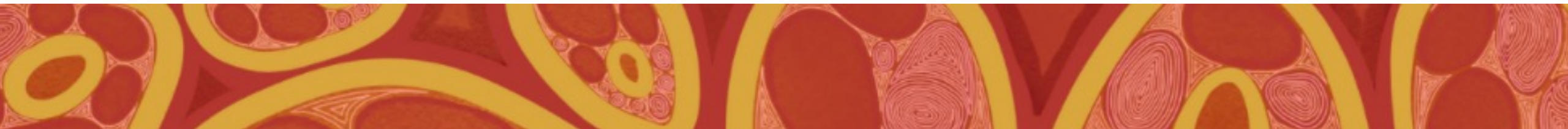
- Traditionally Aboriginal and Torres Strait Islander peoples accessed justice through the application of customary laws.
- However the customary laws of Aboriginal and Torres Strait Islander peoples were given little recognition by the legal system until recently.
- When the English colonised Australia, they ignored ownership of land. This continued until quite recently, assisted by the legal fiction that Australia was terra nullius (land belonging to no-one) at the time of colonisation. The legal argument was that Australia was “settled” (because it was, effectively, vacant) rather than conquered.





# Ensuring Access & Equity

- **Places where Customary Law is Recognised**
- As a result of the High Court decision in Mabo in 1992 there is now limited recognition of Aboriginal ownership and use of land (native title). As well, customary law has some limited influence in the sentencing of some Aboriginal Indigenous offenders and in areas such as family relationships and the protection of sacred sites.
- [https://www.timebase.com.au/support/legalresources/Customary Law Recognition in Australia.html](https://www.timebase.com.au/support/legalresources/Customary_Law_Recognition_in_Australia.html)



# Ensuring Access & Equity

- Moreover the passing of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and the *Native Title Act 1993* (Cth) have given Aboriginal and Torres Strait Islander Peoples greater access to claim rights over land that was previously denied to them.
- These landmark developments have also led to greater recognition by the wider public of the suffering endured by First Nations peoples since colonisation and their special connection to the land.

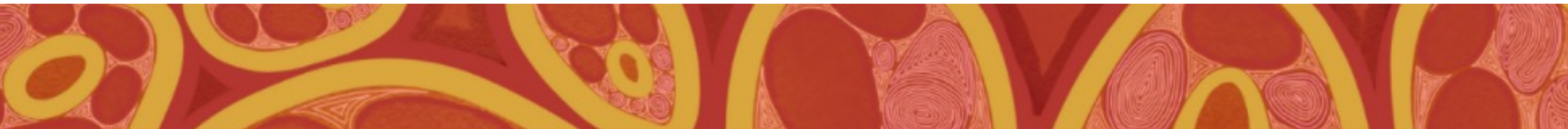


# Ensuring Access & Equity

## ➤ Access through Aboriginal Legal Services

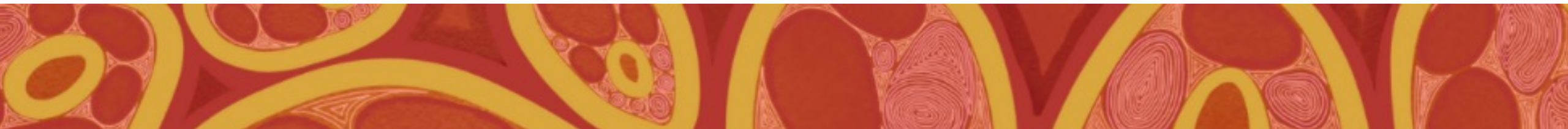
- Aboriginal activists and lawyers established the Aboriginal Legal Service (ALS) in 1970 in the Sydney suburb of Redfern. It was staffed by volunteers who provided free legal advice and representation to the Aboriginal people of inner Sydney.
- In 1971, the service received its first government grant for the salaries of a full-time solicitor, a field officer and a secretary. In 2010, 18 lawyers were working for the ALS.
- The service was Australia's first free legal service, setting the model for mainstream community legal aid. There are now legal services all across Australia.

<https://www.creativespirits.info/aboriginalculture/law/australias-first-aboriginal-legal-service>



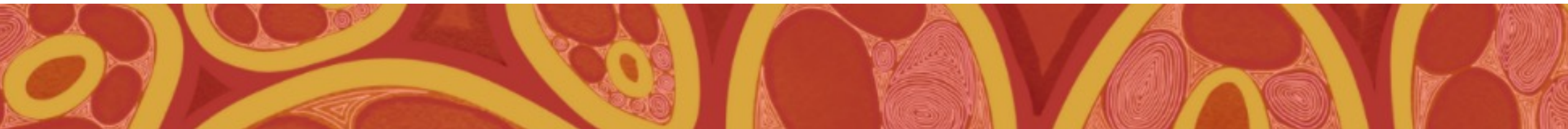
# Ensuring Access & Equity

- National Aboriginal and Torres Strait Islander Legal Service (NATSILS) is the national peak body of Aboriginal and Torres Strait Islander legal services who operate across Australia.
- NATSILS represents and is the national voice of community-controlled Aboriginal and Torres Strait Islander Legal Services. They advocate at the national level for the rights of Aboriginal and Torres Strait Islander peoples within the justice system and work to ensure that Aboriginal and Torres Strait Islander peoples have equitable access to justice.



# Ensuring Access & Equity

- Aboriginal Legal Services assist Aboriginal people in many ways in and outside the courtroom:
  - Custody Notification Service. By law, the police must notify the ALS when an Aboriginal person is arrested. The lawyer speaks with the person and gives advice.
  - Prisoner Support Unit. The Prisoner Support Unit aims to prevent Aboriginal deaths in custody by visiting and checking in with prisoners. It assists in their rehabilitation, provides crisis support, helps prisoners stay in contact with their families and when they are released in unfamiliar towns.
  - Community legal education. The ALS develops, produces and delivers community legal education activities.
  - Aboriginal Field Officers. Field Officers assist ALS lawyers in talking to Aboriginal clients and families, arrange for referrals, and provide law and social justice education in the community.
  - Family Violence Officers. The ALS works with people who have become victims of family violence. Family Violence Officers can also arrange referrals.
  - Law reform. The ALS advocates for the protection of the rights of Aboriginal people, in particular coronial reform and other advances in the criminal justice system.
  - <https://www.creativespirits.info/aboriginalculture/law/australias-first-aboriginal-legal-service>



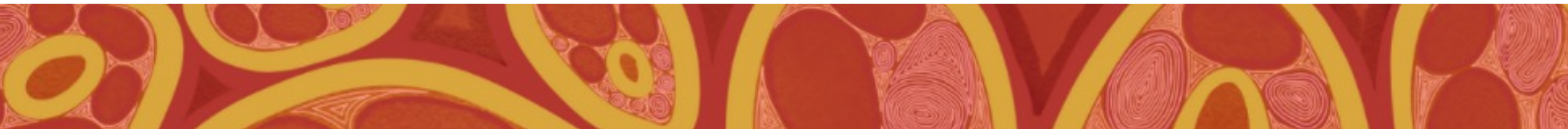


# Ensuring Access & Equity

➤ NATSILS members include:

- North Australian Aboriginal Justice Agency
- Aboriginal Legal Service of Western Australia
- Aboriginal Legal Rights Movement, South Australia
- Victorian Aboriginal Legal Service
- Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd
- Aboriginal Legal Service (NSW/ACT) Limited
- Tasmanian Aboriginal Legal Service

<https://www.natsils.org.au/>



# Ensuring Access & Equity

## ➤ Community legal centres (CLCs)

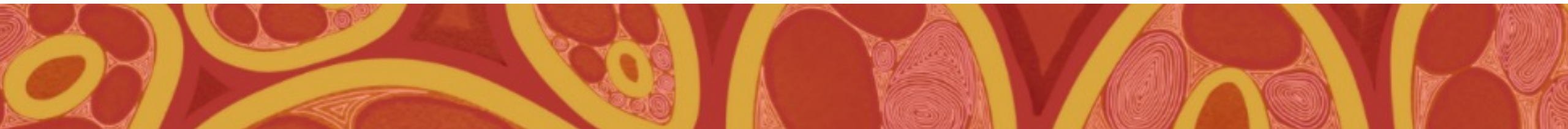
- CLCs are community-embedded organisations that can provide free help for legal problems.
- CLCs do not generally work in criminal law although they do provide lots of legal services and support to victims/survivors of DV.
- For assistance with criminal law issues it is recommended to go to the Aboriginal Legal Service or Legal Aid.
- CLCs are not part of government. They do not provide information to government or police, and are bound by professional obligations and community ethics to keep information private.



# Ensuring Access & Equity

➤ CLCs provide legal information and legal assistance in areas such as:

- Domestic and family violence
- Sexual violence
- Family law
- Traffic fines
- Credit & Debt
- Housing
- Employment
- Discrimination
- Centrelink
- Wills
- Victims Compensation
- Police complaints



# Ensuring Access & Equity

## ➤ Legal Aid

- There are eight legal aid commissions in Australia, one in each state and territory. The purpose of legal aid commissions is to provide vulnerable and disadvantaged Australians with access to justice.
- Commissions provide access to justice by providing the following types of legal assistance:
  - financial assistance to enable people who cannot afford a lawyer to be legally represented in court proceedings and other cases;
  - duty lawyer services for people appearing at court on the day without a lawyer;
  - information and advice about legal rights, responsibilities and remedies, and
  - education programs to inform the community about the law and legal remedies.

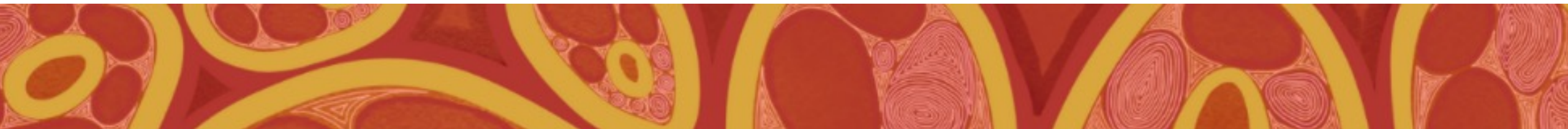


# Ensuring Access & Equity

➤ State and Territory Legal Aid Commissions:

- [Victoria Legal Aid](#)
- [Legal Aid New South Wales](#)
- [Legal Aid Queensland](#)
- [Legal Aid Western Australia](#)
- [Northern Territory Legal Aid Commission](#)
- [Legal Aid Commission of Tasmania](#)
- [Legal Services Commission of South Australia](#)
- [Legal Aid ACT](#)

<https://www.legalaidact.org.au/>

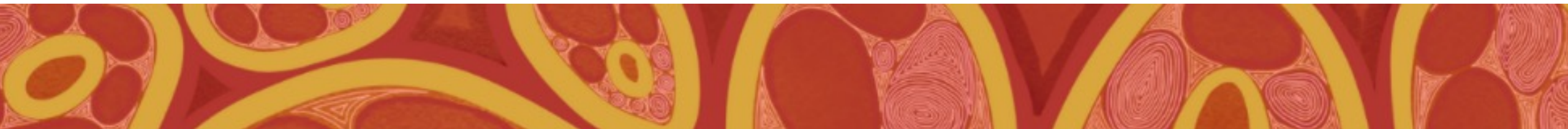




# Ensuring Access & Equity

## ➤ Legal Support for People with a Disability

- First Peoples with disability and their families are amongst the most seriously disadvantaged and disempowered members of the Australian community.
- There are organisations that work for the recognition, respect, protection and fulfilment of the human rights of First Peoples with disability and their families.
- First Peoples Disability Network Australia (FPDN) is a national organisation of and for Australia's First Peoples with disability, their families and communities. The organisation is governed by First Peoples with lived experience of disability.
- FPDN proactively engage with communities around Australia and advocate for the interests of Aboriginal and Torres Strait Islander people with disability in Australia and internationally.
- FPDN follows the human rights framework established by the United Nations [Convention on the Rights of Persons with Disabilities](#), to which Australia is a signatory, and the United Nations [Declaration on the Rights of Indigenous Peoples](#).
- <https://fpdn.org.au/about-us/>



# Ensuring Access & Equity

## ➤ **The Disability Royal Commission**

- The Disability Royal Commission was established in April 2019 in response to community concern about widespread reports of violence against, and the neglect, abuse and exploitation of, people with disability. These incidents might have happened recently or a long time ago.
- The Disability Royal Commission will investigate:
- preventing and better protecting people with disability from experiencing violence, abuse, neglect and exploitation
- achieving best practice in reporting, investigating and responding to violence, abuse, neglect and exploitation of people with disability
- promoting a more inclusive society that supports people with disability to be independent and live free from violence, abuse, neglect and exploitation.



# Ensuring Access & Equity

- The Disability Royal Commission will investigate and report on experiences and conditions in all settings and contexts, including:
  - schools
  - workplaces
  - jails and detention centres
  - secure disability and mental health facilities
  - group homes or boarding houses
  - family homes
  - hospitals
  - day programs



# Ensuring Access & Equity

- The Disability Royal Commission will deliver a final report to the Australian Government by 29 September 2023. In this report, the Royal Commission will recommend how to improve laws, policies, structures and practices to ensure a more inclusive and just society.

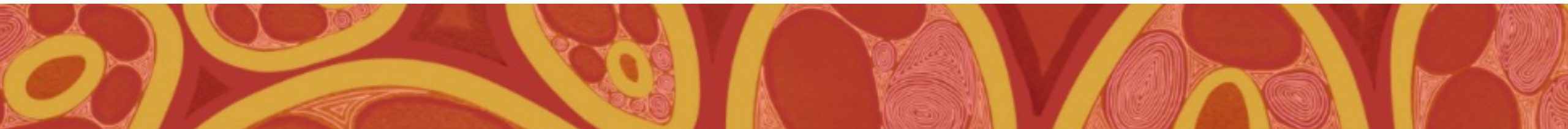
<https://disability.royalcommission.gov.au/about-royal-commission>



# Ensuring Access & Equity

## ➤ **Aboriginal and Torres Strait Islander People with Disability in the Criminal Justice System**

- There is a lack of understanding, services and support for Aboriginal and Torres Strait Islander people with disabilities in the criminal justice system. This can lead to people becoming caught up with police, courts and in prison.
- ‘Unfitness to plead’ laws are supposed to protect people with disabilities in the criminal justice system. They are used when a court decides that a person cannot participate in criminal proceedings because of her or his disability. They can lead to good things, like a person being connected to disability services rather than prison. But they can lead to detention without an end date.

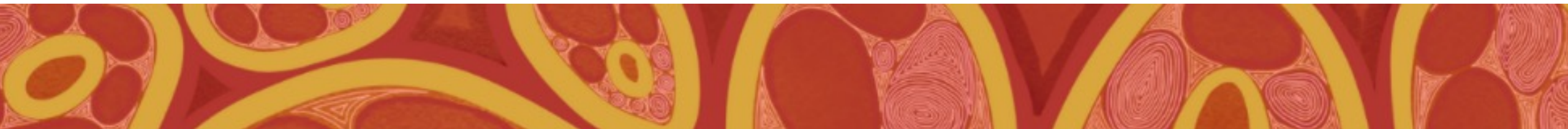




# Ensuring Access & Equity

## ➤ **Unfitness to Plead Project'**

- In 2015-17, researchers collaborated with the Victorian Aboriginal Legal Service and the North Australian Aboriginal Justice Agency for the 'Unfitness to Plead Project'. The Project aimed to help develop supports for Aboriginal and Torres Strait Islander clients with cognitive and mental health disabilities.
- They argue that:
  - Current unfitness to plead laws need to be changed to make sure Aboriginal and Torres Strait Islander people with disabilities can't be detained with no end in sight or get 'lost in the system', and that
  - Laws in every State and Territory need to make sure that Aboriginal and Torres Strait Islander people with disabilities who are accused of a crime get the same opportunity as anyone else to challenge the case against them, but with the support they need to participate.
- [https://socialequity.unimelb.edu.au/\\_data/assets/pdf\\_file/0003/2477037/Unfitness-to-Plead-Project-ATSI-Legal-Services-Brochure.pdf](https://socialequity.unimelb.edu.au/_data/assets/pdf_file/0003/2477037/Unfitness-to-Plead-Project-ATSI-Legal-Services-Brochure.pdf)



# Ensuring Access & Equity

## ➤ **How to Assist an Aboriginal Defendant/The six protocols**

- Protocol 1 Assess whether an interpreter is needed before proceeding to take instructions.
- Protocol 2 Engage the services of a registered, accredited interpreter through the Aboriginal Interpreter Service.
- Protocol 3 Explain your role to the client.
- Protocol 4 Explain the relevant legal or court process to the client prior to taking instructions.
- Protocol 5 Use 'plain English' to the greatest extent possible.
- Protocol 6 Assess whether your client has a hearing or other impairment that may affect their ability to understand.
- [https://www.lawsociety.com.au/sites/default/files/2018-03/indigenous\\_protocols\\_for\\_lawyers\\_0.pdf](https://www.lawsociety.com.au/sites/default/files/2018-03/indigenous_protocols_for_lawyers_0.pdf)



# Ensuring Access & Equity

## ➤ **Specialist Courts**

- The trend towards the use of therapeutic court processes is occurring in Australia. These courts endeavour to use therapeutic court processes, including the judicial case management of participants by a court-based team and through a therapeutic interaction between the bench and the participant in order to promote participant wellbeing.
- Over time, specialist courts (i.e. problem-solving courts) have been created within the structures of traditional courts to deal with specific types of offences and/or offences requiring special attention, for example:
  - ❖ Indigenous courts
  - ❖ Drug courts
  - ❖ Mental Health Courts
- For more information on the specialist courts see Block 4 PPTs:
  - Therapeutic Justice Part 1 & Part 2

