

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS  
ATTORNEY-GENERAL'S DEPARTMENT

**Program 1.1**

**Question No. 109**

**Senator Siewert asked the following question at the hearing on 26 May 2011:**

Many Aboriginal people with a cognitive impairment subject to mental impairment / unfit to plead provisions of state and territory based legislation are indefinitely incarcerated in prisons and psychiatric institutions (in the Northern Territory this group of people are incarcerated in maximum-security prisons) – does the Commonwealth have the power to assist states and territories to overcome this issue?

**The answer to the honourable senator's question is as follows:**

The Australian Government is concerned about the indefinite incarceration of Aboriginal people in prisons and psychiatric institutions. Sentencing and incarceration are a State and Territory responsibility, as is mental health care for people subject to State and Territory court orders. However, the Attorney-General's Department is participating in work under the direction of the National Justice Chief Executive Officers' Group to look into this issue further. The work includes examining existing legislation, policies, programs and services for diversion and support of people with cognitive disabilities in, or at risk of engagement with, the criminal justice system and developing options for consideration to reduce the representation of these people within the system.

The Attorney-General's Department is also involved in a number of initiatives that have the potential to address pathways for Aboriginal prisoners with intellectual disability, cognitive impairment or autism who have been incarcerated.

*National Indigenous Law and Justice Framework*

The Department led the development of the National Indigenous Law and Justice Framework. The Framework was agreed by the Australian and all State and Territory governments in November 2009. It recognises as a strategy the need to 'ensure that all levels of the justice system respond effectively to the mental health needs of Aboriginal and Torres Strait Islander peoples'. Implementation of actions relevant to this strategy falls to State and Territory governments, as they are primarily responsible for the administration of the criminal justice system. Relevant actions include:

- review court-based mental health initiatives to identify and promote culturally competent good practice (Action 2.3.3c)
- increase use of effective court-based mental health diversionary options (Action 2.3.3d), and
- review current mental health care in corrective settings and develop and implement culturally competent mental health throughcare programs (Action 2.3.3e).

*Aboriginal Interpreter Services*

The Department administers a Memorandum of Understanding (MOU) between the Australian and Northern Territory Governments for interpreter services for Aboriginal people in the Territory. Funding supports free access to interpreters for Northern Territory law and justice and health agencies and AGD funded legal service providers.

Individuals in need of an Aboriginal interpreter are able to access the Northern Territory Aboriginal Interpreter Service, and in particular those people who have come in contact with the criminal justice system and need assistance in understanding their rights and options. The Interpreter Service is not specific to people with disabilities. However, it plays an important role in increasing access to relevant services for people who would otherwise be doubly disadvantaged.

#### *Indigenous Justice Program*

The Department provides grant funding through the Indigenous Justice Program for small projects, including prisoner support and throughcare projects, to help respond to the challenge of the accelerating rate of Indigenous incarceration. The Program Guidelines and Service Delivery Standards encourage accessibility of services to all in need including those with special vulnerabilities associated with disability, and also require individual assessment as well as appropriate referral to other agencies.

Prisoner throughcare projects however bring comprehensive case management and the provision of a continuum of services across all necessary elements of successful rehabilitation, which assists in identifying key needs including special vulnerabilities associated with a disability. In 2010-11, the Program provided funding for 13 prisoner throughcare projects, including one in New South Wales, one in Victoria, two in Queensland, two in South Australia, three in Western Australia, one in Tasmania, and three in the Northern Territory.

#### *National Justice Mental Health Initiative*

The Department participated in the National Justice Mental Health Initiative. The Initiative was conducted from March 2008 to July 2010, and aimed to improve the identification, treatment and coordination of services to people with mental illness who come into contact with the criminal justice system in Australia.

The outcomes of that project included: an audit of policy reports, research papers and recommendations relating to mental illness in the criminal justice system; and a publication, *Diversion and Support of Offenders with a Mental Illness: Guidelines for Best Practice*. While the initiative did not focus specifically on Indigenous people who come into contact with the criminal justice system, the publication did identify the particular issues faced by Indigenous prisoners. A copy of the publication can be downloaded at:

[http://www.aic.gov.au/crime\\_community/communitycrime/mental%20health%20and%20crime/~media/aic/njceo/diversion\\_support.pdf](http://www.aic.gov.au/crime_community/communitycrime/mental%20health%20and%20crime/~media/aic/njceo/diversion_support.pdf)