

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

BUDGET ESTIMATES 2017

Attorney General's Department

Program: 1.4 Justice Services

Question No. BE17-111

Senator Siewert asked the following question on 02 June 2017:

At Australia's Universal Periodic Review appearance before the Human Rights Council in November 2015, Australia announced a commitment to improve the way the criminal justice system treats people with cognitive disability who are unfit to plead or found not guilty by reason of mental impairment. Draft National Principles were presented to the working group in November 2016.

1. Can the Department report on progress towards the collation of existing data across jurisdictions and development of resources for national use on the treatment of people with mental and/or cognitive disability unfit to plead or found not guilty by reason of mental aligned with independent impairment?
2. Will the process allow for community consultation on the development of these National Principles?
3. When will this work be made publicly available?
4. Is the Commonwealth aware of any actions of the Northern Territory Government and its Departments of Health and Corrections to ensure that rather than being detained in prisons, people with cognitive disabilities are receiving support services that are professional advice and proper behavioral and disability practice?
5. What measures are being taken to ensure the voices of people with cognitive disabilities are being heard by Government and that uncompromised and independent advocacy will exist on their behalf?

The response to the honourable Senator's question is as follows:

In November 2015, the Law, Crime and Community Safety Council (LCCSC) established a working group on the treatment of people with cognitive disability or mental impairment who are unfit to plead, or are found not guilty by reason of mental impairment. The working group comprises representatives from the Commonwealth, states and territories, and is chaired by the Australian Government Attorney-General's Department.

1. The working group collated and analysed data on fitness to stand trial and the defence of mental impairment and prepared a summary of interstate transfer arrangements for forensic patients and forensic residents. This was presented to LCCSC on 19 May 2017.

2. and 3. The working group also presented the draft National Principles to LCCSC on 19 May 2017, where Attorneys-General committed to take these back to their respective Cabinets for consideration ahead of the next meeting later this year. There will not be a period of public consultation as the National Principles are the subject of Cabinet processes. Once agreed, the principles will be published on the Attorney-General's Department website.

4. The Australian Government is aware that the Northern Territory Community Visitor Program made a submission to the Senate Community Affairs Reference Committee's inquiry into *Indefinite detention of people with cognitive and psychiatric impairment in Australia*.

5. The Government is committed to ensuring that all people with disabilities, including cognitive disability, are supported to exercise their legal capacity. To this end, recommendations from relevant inquiries, including the Australian Law Reform Commission (ALRC)'s inquiry into *Elder Abuse* (tabled June 2017) and the ALRC's inquiry into *Equality, Capacity and Disability in Commonwealth Laws* (tabled November 2014) will continue to inform policy developments.

The Government recognises that providing access to legal representation is essential to providing access to justice. The National Partnership Agreement on Legal Assistance Services prioritises funding towards people whose capacity to resolve legal problems may be compromised by vulnerability or disadvantage. The Australian Government also funds independent disability advocacy agencies under the National Disability Advocacy Program to provide support to people with disability with legal issues, and both disability advocacy agencies and Legal Aid Commissions under the NDIS Appeals program.