

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

Program 1.1 ILHRD

Question No. 101

Senator Boyce asked the following questions following the hearing on 14 February 2012:

Across Australia, many Aboriginal people with a cognitive impairment (intellectual disability or acquired brain injury) are charged with offences but because of their impairment, are found unfit to be tried or not guilty due to their impairment. This often leads to indefinite incarceration in prison despite the person not having been convicted.

1. Would you please advise how many people are currently incarcerated in jails on supervision orders as a result of a finding of unfit to plead or mental impairment?
2. How many people are currently incarcerated in psychiatric unit/institutions on supervision orders as a result of a finding of unfit to plead or mental impairment?
3. How many people are being held in jails and psychiatric units/institutions past the conclusion of their supervision order?
4. How many of these people that are currently detained and are detained past the conclusion of their orders are Aboriginal or Torres Strait islander?
5. On what basis are these people being detained past the conclusion of the supervision orders?
6. What evidence is provided to the courts that determine that this group of people under supervision orders are able to continue to be detained?
7. Who provides the evidence that enables the continued detention past the conclusion of people supervision orders?
8. Many jurisdictions provide residential treatment options that divert people away from imprisonment. What federally funded residential treatment programs are currently operating that divert people found unfit to plead / mentally impaired from jail?
9. What post release funded residential support programs exist that provide an exit option for people whose supervision orders have concluded?
10. Are there any Aboriginal and Torres Strait Islanders with a cognitive impairment in jail whose supervisions orders have concluded because there are no accommodation and treatment options available - if so what jails are they being detained in?

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

1. The Department is not aware of any people charged with federal offences who are currently incarcerated in jails without trial after being found unfit to be tried or due to a finding of mental impairment.

2. The Department is aware of one person charged with a federal offence who is detained in a psychiatric unit/institution following a jury finding that he was not guilty due to mental illness. However, the Department is not aware of any people charged with federal offences who are currently detained in psychiatric units/institutions without trial after being found unfit to be tried.

3.– 7. As outlined in the response to Question No. 47, it is not possible for a person charged with a federal offence to be held past the conclusion of a supervision order.

If a person accused of a federal offence is found unfit to be tried or not guilty due to mental illness, the court can order the person to be detained in a jail or psychiatric unit/institution for a period that does not exceed the maximum period of imprisonment that could have been imposed if the person had been convicted of the offence charged. The person cannot be detained beyond this period. However, the person may be released by the Attorney-General prior to the end of the period. During the detention period, the Attorney-General reviews the person's case every six months after receiving reports from the treating psychiatrists.

The Department does not have details in relation to State and Territory offenders. As outlined in the Department's answer to Question No. 47, due to corrections and disability service provision being primarily matters of State and Territory responsibility, the Department does not collect or store data of this nature. The Department is not in a position to comment on the various laws and practices relevant when a State or Territory offence is in question.

8.– 9. The Department understands the Disability Policy and Research Working Group (a standing committee of the Community and Disability Services Ministers' Advisory Council) has established a People with Disabilities and the Criminal Justice System Working Group, of which the Department of Family, Housing, Community Services and Indigenous Affairs is a member. The Department understands this process is considering what residential treatment programs are currently operating to divert people from jail and what post release funded residential support programs exist. The Attorney-General's Department understands that this research has not yet been finalised.

The Department also expects the outcomes of the NJCEOs Working Group established to consider mental illness and cognitive disability in the Criminal Justice System to include details of programs. This working group is expected to report back to the NJCEOs at the end of this financial year.

10. See 3-7 above. The Department is not aware of any Indigenous Australians with a cognitive impairment (intellectual disability or acquired brain injury) charged with federal offences that are currently detained.