

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

**Program 1.1**

**Question No. 47**

**Senator Boyce asked the following question at the hearing on 14 February 2012:**

**Senator BOYCE:** In terms of data collection, are you able to tell me how many Aboriginal people are currently being detained past the conclusion of their supervision orders—people with intellectual disability or cognitive impairment.

**Ms Fitch:** We will need to take that on notice.

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

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 is not aware of any Indigenous Australians charged with federal offences that fall within this scenario.

The Department is not in a position to comment on data or the various laws and practices relevant when a State or Territory offence is in question.

The Australian Institute of Health and Welfare published The Health of Australia's Prisoners 2010 report in September 2011 to inform understanding of the data sets on this broader policy issue. This report includes data sets on prisoners' mental health, psychological distress and head injury taken from the National Prisoner Health Census.

Investigating ways that the justice system can address the needs of people with a mental illness and/or cognitive disability (including intellectual disability and acquired brain injury), with a strong focus on the needs of Aboriginal, Torres Strait Islander and Maori people, is an action outlined in the exposure draft of Australia's National Human Rights Action Plan 2012.

The Department is working with the States and Territories through a National Justice Chief Executive Officers (NJCEOs) Working Group established to consider these issues. Examination of current data collection methods is not specifically included in this working group's Terms of Reference, but this issue may be considered when the working group develops options for further work.

The Castan Centre for Human Rights Law has been awarded a grant under the Grants to Australian Organisations Program, to research rates of imprisonment, focusing on vulnerable groups including Indigenous Australians, youth and those with a cognitive disability and current analysis of utilisation of alternative sentencing options. Funding for this grant is also a commitment noted in the exposure draft of Australia's National Human Rights Action Plan 2012. The Centre is expected to deliver their research to Government by the end of this financial year. The Department expects this research will help inform Government's understanding of this issue.