

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

**Group 2**

**Program 1.3**

**Question No. 88**

**Senator Boyce asked the following question following the hearing on 16 October 2012:**

The Aboriginal Disability Justice Campaign (ADJC) has recently completed a report titled, "No End in Sight: The Imprisonment and Indefinite Detention of Indigenous Australians with a Cognitive Impairment."

The ADJC estimates that there are between 100 - 150 people detained under mental impairment legislation around the country in prisons and psychiatric units; one third of that group are Indigenous Australians. The ADJC further estimates that of the 150 people detained on order at least one third are being detained indefinitely and again Indigenous Australians are disproportionately affected.

- a. What is the view of the Department regarding the states and territories use of indefinite detention for people detained under mental impairment legislation?
- b. What legislative, policy and funding measures is the Department taking to reduce people detained in prisons and psychiatric units?
- c. What documentation is the Department collecting regarding the fact that people are being detained, often indefinitely, as a result of mental impairment legislation and the fact that it is disproportionately affecting indigenous Australians with a cognitive impairment?

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

The Department does not consider it appropriate to comment on the legislation, policies or practices of States or Territories. The matters described in the Senator Boyce's questions are of State or Territory responsibility.

In 2009, the Australian Government led the development of the National Indigenous Law and Justice Framework. The Framework sets out a number of goals and strategies that are designed to reduce the over-representation of Indigenous people within the criminal justice system, and to ensure that all Australian justice systems comprehensively deliver on the justice needs of Aboriginal and Torres Strait Islander people in a fair and equitable manner. This includes those with mental health needs, disabilities and the otherwise vulnerable. An external evaluation of the Framework will be undertaken in 2013-14. This evaluation will include consideration of the extent to which jurisdictional approaches align with the goals, strategies and actions set out in the

Framework. As part of the evaluation there will be consultation with stakeholders and interested parties to provide feedback on the utility of the Framework and make suggestions for additions or amendments to content. This may include input regarding the use of prisons for the management of Aboriginal and Torres Strait Islander people with cognitive impairment.

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

The Department is fulfilling this action through active participation on the National Justice Chief Executive Officer's (NJCEO) Working Group on the issue of mental illness and/or cognitive disability in the criminal justice system. The Working Group is examining mechanisms employed within the criminal justice system to address the needs of people with a mental illness and/or cognitive disability and is investigating the role that the justice system can play in supporting diversion outcomes for these groups. The Working Group is considering the Aboriginal Disability Justice Campaign's report, *No End in Sight: The Imprisonment and Indefinite Detention of Indigenous Australians with a Cognitive Impairment*.

The Australian Government is currently working with States and Territories to ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Upon ratification, the Optional Protocol will place obligations on Australia to establish a two-part inspection regime covering places of detention within Australia's jurisdiction and control, that is:

- permitting periodic visits to Australian places of detention by the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- establishing an independent domestic mechanism that undertakes more regular inspection and monitoring duties (known as the National Preventive Mechanism).

The obligations under the Optional Protocol relate to places where persons are, or may be, deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence. The system of inspection established under the Optional Protocol will therefore cover all Australian prisons and potentially also some psychiatric units. The preventive inspections will help to ensure that the human rights of all people deprived of their liberty by Australia are respected and that they are not subjected to cruel, inhuman or degrading treatment. As a first step towards ratification of the Optional Protocol, the Australian Government has developed model legislation with States and Territories for introduction in all Australian parliaments. This legislation will provide for visits by the UN Subcommittee. States and Territories are currently reviewing the model legislation and will advise the Commonwealth of their support, or otherwise, by the end of 2012.

States and Territories may collect or hold data and/or documentation on this issue.