

Position statement on the inappropriate incarceration of Aboriginal people with a cognitive impairment

Across Australia, people with a cognitive impairment (intellectual disability or acquired brain injury) are overrepresented in the criminal justice system. So are Aboriginal people. Aboriginal people with a cognitive impairment face multiple disadvantage with the majority also experiencing mental illness, poor physical health and severe social disadvantage. They are seldom provided the accommodation and support needed for a positive and lawful lifestyle.

Many Aboriginal people with a cognitive impairment are charged with serious offences and found unfit to be tried or not guilty due to their impairment. This often leads to indefinite incarceration in prison (or sometimes a psychiatric hospital) despite the person not having been convicted.

This practice occurs across Australia, particularly in Queensland, Western Australia and the Northern Territory. The Northern Territory provides the worst example, with people being indefinitely detained in maximum-security prisons and having reviews of their detention occurring only at the end of a period specified in the detention order or at the discretion of a judge.

This practice breaches Australia's treaty obligations under the International Covenant of Civil and Political Rights, the International Convention on the Rights of Persons with Disabilities and the International Convention on the Elimination of All Forms of Racial Discrimination

There are practical alternatives. In Victoria and NSW, disability services operate specialist accommodation and support programs backed by a wide body of international research. NSW has legislation for "limiting terms" which prevents a person found unfit to be tried being imprisoned for longer than if he or she had been convicted of the offence.

What we want from Australian Governments:

We seek legislative and service frameworks to address the needs of Aboriginal alleged offenders with cognitive impairments, including:

1. Cross-departmental responsibility.
2. Accommodation and support programs both as an alternative to prison and post release
3. That any detention in prison be a last resort and the least restrictive option suited to the person's circumstances.
4. Skilled intervention and support to address offending behaviour being a central element of all services, whether in the community or in prison.

5. Mandatory review of orders for detention of unconvicted individuals at least annually, with a court or tribunal carrying out the review and the individual legally represented and independently assessed.

We seek the end of the widespread and unwarranted use of prisons for the management of unconvicted Aboriginal persons with cognitive impairments.