

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

Program: 1.1

Question No. SBE15/112

Senator Siewert asked the following question at the hearing on 20 October 2015:

In 2014 the Human Rights Commission found that KA, KB, KC, KD had been arbitrarily detained and that the Federal Government had not discussed possible alternative finding options that could have provided a different solution to detention of Indigenous Australians with cognitive impairments in a maximum security prison. At the time the Attorney-General indicated that he would not be considering the recommendations of the report.

1. Is it still the government's position not to consider the recommendations of the Human Rights Commissions findings in relation to this matter?

In 2013 the UN CRPD recommended that Australia as a matter of urgency: a) ends the unwarranted use of prisons for the management of un-convicted persons with disabilities, with a focus on Aboriginal and Torres Strait Islander persons with disabilities, by establishing legislative, administrative and support frameworks that comply with the Convention; b) establishes mandatory guidelines and practice to ensure that persons with disabilities in the criminal justice system are provided with appropriate supports and accommodation; and c) reviews its laws that allow for the deprivation of liberty on the basis of disability, including psychosocial or intellectual disabilities, and repeal provisions that authorize involuntary internment linked to an apparent or diagnosed disability.

2. Can the department advise what steps have been undertaken to respond to this advice.

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

While the criminal justice system primarily falls within state and territory responsibility, the Australian Government is working with state and territory governments to improve the way the criminal justice system treats people with mental and/or cognitive disability.

On 5 November 2015, the Law, Crime and Community Safety Council agreed to establish a cross-jurisdictional working group to collate existing data across jurisdictions and develop resources for national use on the treatment of people with cognitive disability or mental impairment unfit to plead or found not guilty by reason of mental impairment.