

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

Group 2

Program 1.3

Question No. 300

Senator Siewert asked the following question at the hearing on 24 February 2014:

- 1) Given the Concluding Observations from the UN Committee on the Rights of People with Disabilities what is Australia doing to respond to the concern around the existence of indefinite detention in its jurisdictions?
- 2) Given the Concluding Observations from the UN Committee on the Rights of People with Disabilities, what strategies are in place to reduce the over-representation of Indigenous Australians with a cognitive impairment detained under mental impairment legislation in goals and psychiatric institutions?
- 3) Given the Concluding Observations from the UN Committee on the Rights of People with Disabilities will Australia be establishing mandatory guidelines and practice to ensure that persons with disabilities in the criminal justice system are provided with appropriate supports and accommodation?
- 4) Given the Concluding Observations from the UN Committee on the Rights of People with Disabilities will Australia be reviewing 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?

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

- 1) Both criminal detention and the detention of people in mental health facilities are a matter for State and Territory Governments. Accordingly, the Attorney-General's Department has alerted States and Territories to the concluding observations of the United Nations Committee on the Rights of Persons with Disabilities. In accordance with the usual practice Australia will directly address the Committee's recommendations in its next periodic report in 2018.
- 2) See question 1.
- 3) See question 1.
- 4) The Australian Law Reform Commission is also conducting an inquiry into legal barriers for people with disabilities. The inquiry will examine laws and legal frameworks within the Commonwealth jurisdiction that deny or diminish the equal recognition of people with disability as persons before the law and their ability to exercise legal capacity, and consider what, if any, changes could be made to Commonwealth laws and legal frameworks to address these matters. The Department is also aware of several relevant reviews recently completed or underway at the State and Territory level, including:
 - in New South Wales – the NSW Law Reform Commission Report 139: People with Cognitive Mental Health Impairments in the Criminal Justice System released in May 2013,
 - in Victoria – the *Crimes (Mental Impairment and Unfitness to be Tried) Act* is currently being reviewed by the Victorian Law Reform Commission, and
 - in Queensland – the *Mental Health Act* is being reviewed to identify and enact improvements in the Act.