

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

Program: Australian Human Rights Commission

Question No. BE16/002

Senator Hanson-Young asked the following question at the hearing on 5 May 2016:

Senator HANSON-YOUNG: Professor Triggs, I am not sure if you are aware of this. There are reports and there is a statement that was issued by the Nauru government only two weeks ago in relation to their firmly-held position that individuals who commit self-harm or attempt suicide will be charged. In fact, in a number of situations people have been held in the Nauru jail as a result of that. From an international human rights perspective, what is the commission's view on that? What is the commission's view on the Nauru government charging and jailing an asylum seeker for attempted suicide?

Prof. Triggs: As you point out, Senator Hanson-Young, that is a relatively recent report. If I may, I would like to take that question on notice and provide a proper legal view on this.

Senator HANSON-YOUNG: That would be wonderful.

Prof. Triggs: But our view of the law is very well known that detention has become arbitrary on Nauru and, of course, there are obligations under the refugee convention not to discriminate against asylum seekers in any way, and particularly those who have been declared to be refugees. I would like to give a proper legal answer, if I may, on notice.

Senator HANSON-YOUNG: That would be great. Thank you.

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

The Commission considers that several human rights obligations may be engaged if a person is penalised for a suicide attempt.

Where mental health is a factor in a suicide attempt, the obligation to ensure the highest attainable standard health may be engaged.ⁱ In these cases, the Commission considers that imposing a punishment which could compound their mental ill-health, hamper recovery or lead to further suicidal ideation may lead to violations of the right to health.

Additional obligations would be engaged if the person attempting suicide is a child. The *Convention on the Rights of the Child* stipulates that in all actions concerning children, the best interests of the child shall be a primary consideration. It also obliges States to ensure that child is afforded the protection and care necessary for their wellbeing.ⁱⁱ Imposing a criminal penalty on a child who attempts suicide may lead to violations of these provisions.

The Commission also considers that in cases where the punishment imposed has a particularly negative impact on the person's health or wellbeing, the obligation not to subject anyone to cruel, inhuman or degrading treatment or punishment may be engaged.ⁱⁱⁱ

ⁱ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976), art 12(1); *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), art 24(1).

ⁱⁱ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), arts 3(1), 3(2).

ⁱⁱⁱ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), art 7; *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), art 37(a).