

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

Group 3

Program 1.6

Question No. 149

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

- 1) How do breaches of the 1984 UN *Convention Against Torture* become crimes under federal law over which Australian courts have jurisdiction?
- 2) Does every Australian State and Territory have a specific offence of torture?
 - i. Are there any differences between states and territories in how torture is criminalised?
 - ii. Alternatively is the legal regime identical across the Commonwealth?
- 3) In jurisdictions with no specific offence of torture, how are acts constituting torture criminalized?

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

- 1) The Australian Government has given effect to its obligations under the 1984 *Convention Against Torture* (Convention) by criminalising torture under Division 274 of the *Commonwealth Criminal Code Act 1995* (Criminal Code). Australian courts have jurisdiction to determine Commonwealth criminal matters.
- 2) The Australian Government does not have oversight of State and Territory legal frameworks but notes that some States and Territories have specific torture offences. The Commonwealth torture offence operates concurrently with existing State and Territory offences.
- 3) The Australian Government has criminalised torture under the Criminal Code. Acts falling within the Convention's definition of torture may also constitute offences under State and Territory criminal laws.