

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

Group 2

Program 1.3

Question No. 22

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

Senator SIEWERT: I want to follow up on Indigenous incarceration as well, particularly with persons with disabilities. I am wondering if the department has had a look at the concluding observations from the UN Committee on the Rights of Persons with Disabilities in September last year, when they made comment about the rate of incarceration and, in particular, the imprisonment of people with disabilities who have not been convicted of a crime.

Mr Wilkins: We are a little bit constrained. A lot of these recommendations are directed at the states and territories, and we do not know what they are necessarily going to do on those. A lot of them are in other departments. This would be quite a wide-ranging discussion.

Senator SIEWERT: Right. I want to narrow it down a little bit, but I wanted to know first off if you are familiar with those recommendations.

Mr Wilkins: No, I am not personally—

Senator SIEWERT: I beg your pardon. Is the department?

Mr Reid: Yes, we are aware of those recommendations.

Senator SIEWERT: Okay. Given that Australia is a signatory to the convention, is it something you are going to be taking a lead role in responding to?

Mr Reid: A range of different Commonwealth agencies and state and territory agencies will be responsible for different aspects of the recommendations. I do not know that I would call our role a lead coordinating role.

Senator SIEWERT: Okay. What role will you be taking?

Mr Wilkins: I think it is probably too early to say exactly who is going to be coordinating this and how it is going to be coordinated through which ministerial councils. I am not quite sure yet, actually, so I do not think we can answer that question.

Senator SIEWERT: Could you answer the question in terms of a time line in which it looks like there will be a decision on that process?

Mr Wilkins: I think we will have to take that on notice. As I said, I am not familiar with it. We were not aware this was coming on, so I have not read the actual obligations, thought about exactly how they might be taken forward or discussed it with colleagues. I think we will probably need to take it on notice.

Senator SIEWERT: It would be appreciated if you could take that on notice in terms of the process for addressing those recommendations, in particular ending the unwarranted use of prisons for management of unconvicted persons with disabilities. It covers a wide range of issues under that. Could you take on notice what your agency's response is going to be?

Mr Wilkins: Do you mean what the process might be for establishing responses to this?

Senator SIEWERT: Given that it does not seem to be addressed yet, what the process is for responding to those recommendations from your agency's perspective if you are not going to be the lead agency.

Mr Wilkins: Okay.

Senator SIEWERT: They also talk about establishing mandatory guidelines and practices to ensure that persons with disabilities in the criminal justice system are provided with appropriate supports and accommodation. Could you look at all those recommendations that are pertinent to your department?

Mr Wilkins: Yes, if it is relevant. We obviously do not run any prisons.

Senator SIEWERT: No. But, as I said, Australia is a signatory to the convention.

Mr Wilkins: Yes, but you understand that does not necessarily mean that the obligations reside at the Commonwealth level.

Senator SIEWERT: I appreciate—and we have traversed this area before—that states are responsible for incarceration. However, Australia is signatory to the convention and therefore I presume that the Commonwealth will be undertaking the lead in responding to those recommendations.

Mr Wilkins: In a sense. It may be conveying what the federation of Australia is going to do about those obligations, but it will not necessarily be a Commonwealth agency that is doing so.

Senator SIEWERT: I appreciate that. So there will be a process established around that conveying, and I for one would certainly hope that there was more active engagement of the Commonwealth with the states and territories.

Mr Wilkins: Well, that is what we are going to find out: what timeline and how that might work. We will come back to you on all of that.

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

In Australia, State and Territory governments are responsible for the management and operation of prisons. 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 the next periodic report in 2018.