

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

Program 1.1

Question No. 110

Senator Siewert asked the following question at the hearing on 26 May 2011:

Given that indefinite incarceration seems only to affect people with a cognitive impairment, as a distinct group in society does this constitute direct or indirect discrimination? Does this breach our obligations under the Convention on the Rights of Persons with Disabilities?

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

The Department is unable to provide legal advice to the Committee, but provides the following information on Australia's obligations under the Convention.

Under article 14 of the Convention on the Rights of Persons with Disabilities, Australia has an obligation to ensure that persons with disabilities, on an equal basis with others:

- (a) Enjoy the right to liberty and security of person;
- (b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

Australia also has an obligation to ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.

In Australia's initial report under the Convention on the Rights of Persons with Disabilities, submitted to the UN in December 2010, the Government emphasised that it is committed to ensuring that no one in Australia is deprived of their liberty on the basis of their disability.