

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

Group 2

Program 1.1

Question No. 30

Senator Wright asked the following question at the hearing on 29 May 2013:

Senator WRIGHT: There is increasing concern in Australia about the detention of young people and the nature of the detention that they are undertaking, and I am interested in knowing what our international obligations would be about that.

Mr Manning: There are obligations of a general nature in relation to anyone who is detained—in, for example, the International Covenant on Civil and Political Rights—for example, obligations in relation to humane treatment. There are obligations in relation to not detaining people arbitrarily which apply to adults and children equally. Then there are also obligations in relation to the Convention on the Rights of the Child about using detention as a matter of last resort—however, Australia has reservations in relation to those obligations, mainly borne as a result of the geographic situation in Australia.

Senator WRIGHT: What do you mean by that?

Mr Manning: In the sense that, at the time, Australia did not think it could necessarily guarantee that, because its size meant that there were benefits in detaining children close to their families which could not be guaranteed in all circumstances—which meant that guarantees about not detaining children with adults, for example, could not be guaranteed.

Senator WRIGHT: If it is helpful, perhaps you could take that on notice and give a bit more specificity about the obligations in relation to children as opposed to the general obligations about detention.

Mr Wilkins: We might be able to refer you to some articles that deal with this.

Mr Manning: Certainly we can take it on notice and cite relevant articles on the Convention on the Rights of the Child, for example, and give some more details about Australia's reservations and declarations.

Senator WRIGHT: Thank you, I would appreciate that. Perhaps you can also look at this when you are answering that question: I am interested in whether any of these obligations specifically address the issue of detaining people under the age of 18 in adult facilities.

Mr Manning: Certainly. I presume that is directed towards the issue I was speaking of earlier about children and adults being detained separately—the issue about which Australia has a reservation.

Senator WRIGHT: What research is the department aware of that examines the impact of detaining youths in adult facilities? Does any of that research focus on Indigenous Australian youth? Again, it is a broad question that you may want to take on notice.

Mr Wilkins: I think we will need to take that on notice. Other areas of the department that look at Indigenous programs may well have some information about that, but we will take that on notice.

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

In respect of the international obligations in relation to the detention of children, including the issue of detaining people under the age of 18 in adult facilities:

Under article 3(1) of the Convention on the Rights of the Child (CRC), the best interests of the child should be a primary consideration in all actions concerning children. Article 37(b) of the CRC also provides that detention of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

Article 37(c) of the CRC provides that every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of their age.

Article 37(c) of the CRC also provides that every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so. Under article 37(c) of the CRC, every child shall have the right to maintain contact with their family through correspondence and visits (save in exceptional circumstances).

Australia has entered limited reservations to article 37(c) which provides that:

...the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia. Australia, therefore, ratifies the Convention to the extent that it is unable to comply with the obligation imposed by article 37(c).

In respect of research which the Department is aware of on the impact of detaining youths in adult facilities, including the impact on Indigenous Australian youth:

The Department is only aware of limited research on the impact of detaining youths in adult facilities and has not identified research which specifically examines the impact on Indigenous youth. The Department is aware of two recent bodies of research related to juvenile offenders:

- Dr Sharon Casey & Dr Andrew Day, 'Assessing psychological maturity in juvenile offenders', presented at the Australasian Youth Justice Conference, 20-22 May 2013
- Kelly Richards, 'What makes juvenile offenders different from adult offenders?' (2011) *Trends & Issues in Crime and Criminal Justice* No. 409, Australian Institute of Criminology.