

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

Group 2

Program 1.1

Question No. 154

Senator Wright asked the following question at the hearing on 18 November 2013:

- 1) Will the topic of ratifying the Optional Protocol to the Convention Against Torture (OPCAT) appear on the agenda for the April 2014 meeting of the Standing Council on Law and Justice?
- 2) What consideration has been given to the implications of ratifying the OPCAT for the aged care sector, and particularly the operations of closed dementia units?
- 3) What are the implications referred to in question 2?
- 4) What is the Department's position on whether Australia's obligations under the OPCAT, and the Convention Against Torture itself, are owed to people who have sought asylum in Australia and those who have been transferred to a third country for processing?
- 5) Please provide an update on the development of a national preventive mechanism, in accordance with Australia's obligations under the OPCAT.
- 6) Please provide an update on the Commonwealth's model legislation, in accordance with its obligations under the OPCAT.
- 7) Please provide an update on how the states and territories are progressing in relation to their complementary legislation.

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

- 1) The agenda for the April 2014 meeting has not been finalised.
- 2) The Optional Protocol would only apply to a closed dementia unit if it operated as a form of detention, imprisonment or a custodial setting, where persons are held by virtue of an order given by a public authority or at its investigation or with its consent.
- 3) If a closed detention unit satisfied the test set out in Article 4 of the Optional Protocol (outlined in part in the response to question 2) it may be inspected to assess its compliance with the Convention against Torture.
- 4)-6) Australia's obligations under the Convention against Torture are engaged in relation to any persons in any territory under its jurisdiction. As Australia has not ratified the Optional Protocol, it has no obligations under it.
- 7) The question is one for the State and Territory Governments.