

Parliamentary Joint Committee on Human Rights

Attorney-General's Department

Hearing date: 12 May 2023

Hansard page: 16

Josh Burns asked the following question:

CHAIR: That's fine. It is always good to get some clarification on that. Finally, how many people are in the international law and human rights unit? How many people roughly are there to provide advice?

Ms Sheehan: Within the human rights policy team, there are probably about 30 in the branch as a whole. They are working on a whole range of issues. We would be giving you ballpark.

Ms Bennett: There aren't dedicated officers.

Ms Sheehan: It wouldn't be their sole dedicated function.

Ms Bennett: That is spread across the branch. People have different areas of expertise across human rights, so it can depend on when things come in. I don't have an exact number.

Ms Sheehan: Without having dedicated officers who only work on statements of compatibility, it's a little difficult, I guess, to answer precisely.

CHAIR: Is it possible to take it on notice and come back to the committee with whatever information you can provide?

Ms Sheehan: I think we would be providing a fairly rough number because people might be working on other policy projects and see compatibility as a portion of what their job might entail. It might be difficult to try to land a figure for you.

Mr BROADBENT: You have to do everything.

CHAIR: I work in an electorate office. I'm aware of that. That's fine. Whatever information you can provide will be much appreciated.

The response to the question is as follows:

In May 2023, there were 35 staff working in the Human Rights Branch. Given the range of responsibilities of staff, it is not possible to estimate the number of FTE dedicated to Statements of Compatibility work.

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Josh Burns asked the following question:

CHAIR: Before I hand over to the member for North Sydney, I want to ask one clarifying question. Section 7.18 of the Legislation Handbook states:

Responsibility for presenting a statement of compatibility lies with the minister responsible for the legislation or the rule-maker. AGD is available to provide assistance in relation to statements of compatibility. It also provides legal advice (on a billable basis) on Australia's international human rights obligations.

The billable basis doesn't happen?

Ms Sheehan: The Australian Government Solicitor would bill for advice that it provides. The Office of International Law—I'm not sure whether this is perhaps a version control issue with the Legislation Handbook; I will check once I get back to the department now that you've mentioned it to me—years ago used to bill for its legal advice. I can't remember what year they stopped doing that. They no longer charge government for advice. It's either a reference to the Australian Government Solicitor or, if it's meant to be a reference to the Office of International Law, we probably need to pick that up. I will have a look.

CHAIR: That's fine. It is always good to get some clarification on that.

The response to the question is as follows:

The Office of International Law (OIL) ceased billing for international legal advice on 1 July 2017. The Australian Government Solicitor (AGS) continues to bill for its services. Both OIL and AGS are tied providers of public international law advice pursuant to the Legal Services Directions.

The *Legislation Handbook* (February 2017) is published by the Department of the Prime Minister and Cabinet (PM&C). The Attorney-General's Department has contacted PM&C to suggest paragraph 7.18 of the *Legislation Handbook* be clarified to reflect the above.

Parliamentary Joint Committee on Human Rights
Inquiry into Australia's Human Rights Framework
Attorney-General's Department

Hearing date: 12 May 2023

Hansard page: 18

Kylea Tink MP asked the following question:

Ms TINK: I have just one more question. It is quite a specific one. I apologise from going big and hairy right down to the detail. I am curious. Has there been a review of Australia's counter-terrorism laws with the international human rights obligations in mind, to your knowledge?

Ms Sheehan: The Independent National Security Legislation Monitor has conducted a number of reviews into counter-terrorism laws. It's not my area so I'm a little hesitant to give you detail on that. That is one function that the independent monitor performs. I do know that looking at human rights compliance has been a focus of some of the legislative reviews that the INSLM has conducted. I don't have the specifics of which legislation has been reviewed and the timing of that. I think that the INSLM reports are ultimately made public. I could check that for you.

Ms TINK: If you wouldn't mind.

The response to the question is as follows:

The Independent National Security Legislation Monitor (INSLM) assists Ministers in ensuring, amongst other things, that Australia's counter-terrorism and national security legislation is consistent with our international human rights obligations and contains appropriate safeguards for protecting the rights of individuals. Since the establishment of the office of the INSLM in 2010, INSLM reports have been tabled in the Parliament.

Parliamentary Joint Committee on Human Rights

Attorney-General's Department

Hearing date: 12 May 2023

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Senator Lidia Thorpe asked the following question:

Senator THORPE: So how does that work when incarceration rates are out of control and we have over 500 deaths in custody in this country? What is the A-G Department's responsibility there if it's about justice?

Ms Sheehan: I don't work in that area. It would be difficult for me to really give you a lot of detail about what those policies are and how we're implementing them. It would also be something that is conducted in cooperation with the states and territories.

Senator THORPE: Thank you. Could you take that on notice and provide some more information?

Ms Sheehan: I can certainly take on notice to provide some information about our criminal justice work and what activities they are conducting. We can do that.

Senator THORPE: What is the A-G's Department doing about the recommendations to the royal commission into Aboriginal deaths in custody given it's three decades old?

Ms Sheehan: I think that might be for other colleagues. I can take on notice to provide some information about our criminal justice work.

The response to the question is as follows:

The Australian Government acknowledges that while state and territory governments are primarily responsible for criminal justice and corrections in their jurisdictions, it has an important role in addressing the drivers to contact with justice system, to improve the lives of First Nations people and to address the disproportionate rates of incarceration.

This is line with the commitment for collective effort, made by all governments, under the National Agreement on Closing the Gap (the National Agreement), particularly the two justice targets (Targets 10 and 11), to reduce adult incarceration and youth detention rates.

It is also consistent with the central finding of the *Royal Commission into Aboriginal Deaths in Custody* (Royal Commission) – to reduce deaths in custody, we must reduce the number of First Nations people being incarcerated.

Commonwealth action to reduce First Nations incarceration rates

In the October 2022-23 Budget, the Australian Government committed \$99 million for a First Nations justice package. Central to this package was the commitment of \$81.5 million to justice reinvestment, comprising \$69 million for a National Justice Reinvestment Program (Program) and \$12.5 million to establish an independent National Justice Reinvestment Unit (Unit), as recommended by the Australian Law Reform Commission's *Pathways to Justice* report.

Justice reinvestment allows First Nations communities to identify the best ways to reduce over-incarceration and address the underlying drivers of contact with the criminal justice system, and empowers those communities to make decisions about the policies, programs and decisions that affect their lives. This is consistent with the central finding of the Royal Commission.

The Government committed to support up to 30 community-led place-based initiatives across Australia through the National Program, with early investments in Halls Creek, WA and Alice Springs, NT.

The Halls Creek commitment has been delivered and will develop an existing men's shed into a Men's Tribal Area to better support Aboriginal men from Halls Creek and surrounding areas with health issues, family relationships, alcohol management conversations and more.

Officials from the Attorney-General's Department have been working with Traditional Owners, Aboriginal Community Controlled Organisations and relevant councils since November 2022 to progress a justice reinvestment initiative for Alice Springs, Town Camps and surrounds. A consortium of Lhere Artepe Aboriginal Corporation, Desert Knowledge Australia and Anglicare NT has been identified to be the Backbone for an initiative and is working to progress a grant opportunity. It is the Government's intention for funding to be delivered to support the Backbone this financial year.

In the 2023-24 Budget, the Australian Government announced \$10 million for justice reinvestment in Central Australia for four years from 2023-24. This funding is in addition to the \$69 million allocated to the National Justice Reinvestment Program in Budget 2022-23. Communities in Central Australia will be able to apply for funding when the National Justice Reinvestment Program opens later this year.

Other commitments within the First Nations justice package are:

- \$13.5 million in additional funding to Aboriginal and Torres Strait Islander Legal Services (ATSILS) to increase their capacity to provide culturally appropriate legal assistance in coronial inquiries.
- \$1 million to build greater capacity in the peak body, the National Aboriginal and Torres Strait Islander Legal Services (NATSILS) to provide leadership across the Indigenous legal sector.
- \$3 million to support the National Family Violence Prevention Legal Services (FVPLS) Forum and all FVPLS providers, who deliver legal assistance and non-legal support to victim-survivors of family and domestic violence and sexual assault.
- National real-time reporting of deaths in custody, with implementation on track for 2023.

In recognition of the demands placed on ATSILS due to the rising cost of providing critical front-line services, the Australian Government announced on 19 May 2023 that it will provide \$21 million in one-off additional funding to ATSILS to ensure ongoing access to justice for First Nations people.

Work in partnership with First Nations people and States and Territories to reduce First Nations incarceration rates

In line with Priority Reform One of the National Agreement (formal partnerships and shared decision-making), the Australian Government is working in partnership with Aboriginal and Torres Strait Islander Coalition of Peak organisations and independent justice experts, and state and territory governments, through the Justice Policy Partnership (JPP). The JPP's objective is to take joined-up action to address the overrepresentation of First Nations adults and young people in prison and youth detention (Outcomes 10 and 11 of the National Agreement).

The current priority of the JPP is finalising its Strategic Framework, to guide the work of the JPP over the duration of the National Agreement, and accompanying recommendations to Joint Council. Decisions of the JPP are made on a consensus basis, and it is working towards seeking endorsement of the Strategic Framework and recommendations at the next meeting of the Joint Council on Closing the Gap on 7 June 2023.

In line with the Priority Reforms under the National Agreement, the focus and priorities of the JPP –which will likely be reflected in its final Strategic Framework – include:

- transforming justice systems by eliminating institutional racism and building cultural capability in the justice sector, consistent with Priority Reform Three
- strengthening formal justice partnerships and government accountability, consistent with Priority Reform One
- supporting community-led change by building the Aboriginal community-controlled justice sector, consistent with Priority Reform Two, and
- ensuring there are holistic, integrated and inclusive approaches to support justice system reform, recognising the socio-economic drivers of incarceration – including health, education and child protection – sit outside the justice system.

The recommendations of the Royal Commission and subsequent Commissions, inquiries and reviews have underpinned all seven meetings of the JPP, and have informed the development of the Strategic Framework and accompanying recommendations to Joint Council.

The Attorney-General's Department is also working closely with states, territories and JPP representatives of the Standing Council of Attorneys-General (SCAG) Age of Criminal Responsibility Working Group to develop a proposal to raise the minimum age of criminal responsibility, paying particular attention to eliminating the overrepresentation of First Nations children in the criminal justice system. The Working Group's report is due to be delivered ahead of the next meeting of SCAG.

Implementation of the Royal Commission recommendations for which the Attorney-General's Department is responsible

The Attorney-General's Department is responsible for 23 recommendations from the Royal Commission (17 complete), which focus on land rights, legal assistance, and anti-discrimination legislation. The department has acted to address recommendations as they relate to issues that fall within its responsibilities, including through amendments to the *Racial Discrimination Act 1975*, enactment of the *Native Title Legislation Amendment Act 2021*, ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), and baseline and additional funding for ATSILS.

The Attorney-General's portfolio includes the Australian Federal Police (AFP) and the Australian Institute of Criminology (AIC), and so the Attorney-General's portfolio is more broadly responsible for recommendations relating to law enforcement and criminal law policy. Specific questions about AFP or AIC implementation of the Royal Commission recommendations should be directed to those agencies.

The department has previously answered questions about recommendations for which it considers itself responsible (see Attachments A and B – March 2021 estimates, question from Senator Dodson answered 7 May 2021, and Question on Notice from Senator Thorpe from October 2022 estimates, respectively).

LCC-AE21-23 Recommendations from the Aboriginal Deaths in Custody Royal Commission that are the responsibility of AGD

**Senate STANDING COMMITTEE ON Legal and Constitutional Affairs
ADDITIONAL ESTIMATES 2020-21**

Attorney-General's Department

LCC-AE21-23 Recommendations from the Aboriginal Deaths in Custody Royal Commission that are the responsibility of AGD

Senator Patrick Dodson asked the following question on 23 March 2021:

Senator DODSON: Okay. Is it possible to get a mud map of who's responsible for what in what departments and what divisions of those departments are responsible for what? It's a bit of a quagmire. We don't know who does what here.

Mr Anderson: There was a Deloitte's report a few years ago that I think was commissioned by the National Indigenous Australians Agency, or by a precursor—

Senator DODSON: Yes, it was repudiated by about 33 jurists, as I understand it.

Mr Anderson: That's the most recent version I'm aware of that worked through allocating lines of responsibility for different recommendations. For this portfolio, there are obviously questions about the operation of the native title system, about the National Aboriginal and Torres Strait Islander legal services.

Senator DODSON: I'm just particularly interested in the royal commission responses and who is responsible for which of those recommendations—what department, what unit or what division. That's what I want to know.

Mr Anderson: The National Indigenous Australians Agency would be best placed to provide that mud map.

Senator DODSON: Okay. I'll quote that to them on Friday.

Mr Anderson: We would be happy to take on notice providing you with the recommendations that we believe we're responsible for, if that would assist.

Senator DODSON: That would be most appreciated.

The response to the Honourable Senator's question is as follows:

The Attorney-General's Department considers the following Recommendations of the *Royal Commission into Aboriginal Deaths in Custody* include aspects that fall within its portfolio responsibilities: Recommendations 4, 23, 96, 99, 100, 105-108, 211-213, 219, 234, 314, 333, 334 and 336-338.

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
BUDGET ESTIMATES OCT/NOV 2022-23

Attorney-General's Department

LCC-OBE22-100 - First Nations Deaths in Custody

Senator Lidia Thorpe asked the following question on 17 November 2022:

- Could you please provide an update on the implementation of the recommendations from the Royal Commission into Aboriginal Deaths in Custody?
- The only review of the recommendations from the Royal Commission into Aboriginal Deaths in Custody since it came down over 30 years ago was a superficial desktop review that has been highly criticised as being misleadingly positive. Given the inadequacy of this review, can you please outline what steps would need to be taken to provide a comprehensive and coordinated review of the implementation of these recommendations, and what the role of the AG Department might be in this?
- How is the AG Department working in collaboration with its state and territory counterparts (for instance, through its work with the Council of Attorneys-General) to provide a comprehensive review of the recommendations and their implementation status, and how do you think this work could be improved?

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

Consistent with the central recommendation of the Royal Commission, the Australian Government, with the Attorney-General and Minister for Indigenous Australians jointly responsible, is focussed on addressing the unacceptably high number of First Nations adults and young people incarcerated.

This is primarily being undertaken through the National Agreement on Closing the Gap (Targets 10 and 11), and through the four Priority Reforms, particularly to work in partnership with the Coalition of the Peaks, independent Indigenous representatives and the States and Territories, through the Justice Policy Partnership.

Prior to machinery of government changes on 1 July 2022, the Attorney-General's Department has implemented most of the recommendations for which it was responsible. As the Australian Federal Police and the Australian Institute of Criminology now fall within the Attorney-General's portfolio, the department is considering if there are additional recommendations that require action.

In its recent Budget, the Australian Government made a number of commitments aimed at achieving the Closing the Gap targets and improving the lives of First Nations people, including a \$99 million First Nations justice package consisting of:

- \$81.5 million to invest in up to 30 community-led justice reinvestment initiatives across Australia and establish an independent National Justice Reinvestment unit as recommended by the Australian Law Reform Commission
- \$13.5 million in additional funding to Aboriginal and Torres Strait Islander Legal Services (ATSILS) to increase their capacity to provide culturally appropriate legal assistance in coronial inquiries
- \$1 million to build greater capacity in the peak body, the National Aboriginal and Torres Strait Islander Legal Services (NATSILS) to provide leadership across the Indigenous legal sector, and
- \$3 million to support the National Family Violence Prevention Legal Services (FVPLS) Forum and all FVPLS providers, who deliver legal assistance and non-legal support to victim-survivors of family and domestic violence and sexual assault.

The Attorney-General's Department collaborates closely with State and Territory Governments through the Standing Council of Attorneys-General (SCAG) justice initiatives, including developing a proposal to raise the minimum age of criminal responsibility, paying particular attention to eliminating the overrepresentation of First Nations children in the criminal justice system.