Australian Government
Attorney-General's Department

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Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016

Attorney-General's Department submission to the Parliamentary Joint Committee on Intelligence and Security

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Introduction

On 11 December 2015, the Council of Australian Governments (COAG) agreed to task the Australia-New Zealand Counter-Terrorism Committee (ANZCTC) to develop a nationally consistent post-sentence preventative detention scheme to enable a continuing period of imprisonment for high risk terrorist offenders. The ANZCTC tasked the Legal Issues Working Group (LIWG) with evaluating the proposal. The LIWG provided the ANZCTC with a progress report outlining possible features of a proposed regime on 31 March2016.

On 1 April 2016, COAG agreed that the Commonwealth should draft legislation to introduce, as soon as practicable, a nationally consistent post-sentence preventative detention scheme, with appropriate protections, for high-risk terrorist offenders.

A majority of states and territories, as well as international counterparts including the United Kingdom (UK) and New Zealand (NZ), have enacted schemes which attempt to manage 'dangerous' offenders through post-sentence controls including extended supervision or in some cases continuing detention. New South Wales (NSW),[1] South Australia (SA),[2] the UK[3] and NZ[4] have schemes which cover both sex offenders and high risk violent offenders, while Queensland (QLD), Victoria, Western Australia (WA), and the Northern Territory (NT) have limited their schemes to only sex offenders. Tasmania and the Australian Capital Territory (ACT) do not have post-sentence detention schemes for sex offenders or violent offenders. **Attachment A** provides information on how many people are subject to continuing detention or extended supervision orders under the state and territory serious sex / violent offender schemes.

The NSW and SA post-sentence preventative schemes apply to high risk violent offenders—those convicted of offences equivalent to murder, manslaughter or occasioning grievous bodily harm. In their current form it is unlikely such schemes would extend to those convicted of preparatory terrorism offences (for example, providing or receiving training connected with preparation for, engagement in, or assistance in a terrorist act or directing the activities of a terrorist organisation).

Currently, where a terrorist offender still presents a risk to the community at the end of their custodial sentence, there are limited options to manage that risk following their release from prison. While in specific circumstances the person could potentially be subject to a preventative detention order, this only allows the person to be detained for between 2-14 days (depending on which scheme is used), and only where a terrorist act is suspected of occurring imminently. In some cases a control order could also be imposed on the individual to mitigate the risk of a terrorist act occurring. There may, however, be circumstances where the obligations, prohibitions or restrictions available under the control order regime are insufficient to address the assessed risk of a terrorist act occurring. This is especially the case in the current security environment where an attack can be planned and carried out with great speed, ease and little engagement with other individuals.

[1] *Crimes (High Risk Offenders) Act 2006* (NSW).
[2] *Criminal Law (High Risk Offenders) Act 2015* (SA).
[3] *Criminal Justice Act 2003* (UK).
[4] *Public Safety (Public Protections Orders) Act 2014* (NZ).

There are currently 16 terrorist offenders serving sentences of imprisonment for relevant terrorism-related offences in NSW and Victoria. The head sentence for these offenders will expire from 2019 onwards. There are 33 individuals currently before the courts for relevant terrorism-related offences in NSW, Victoria and Queensland. The court proceedings may be at various stages including, committal, trial or sentencing. **Attachment B** provides a breakdown of these statistics by jurisdiction.

The Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016 (the Bill) implements the 1 April 2016 Council of Australian Governments agreement and is modelled heavily on existing state and territory post sentence detention schemes for high risk sex and/or violent offenders.

This submission draws to the Committee's attention those matters that were specifically referred to by the Attorney-General for the Committee's consideration, practical implementation issues raised by states and territories and a small number of possible government amendments.

The Commonwealth has convened an Implementation Working Group with legal, corrections and law enforcement representatives from each jurisdiction to progress all outstanding issues relating to implementation of the proposed post sentence preventative detention scheme.

Issues referred by the Attorney-General for the Committee's consideration

Relationship between the post sentence preventative detention scheme and control order scheme

Unlike the State and Territory regimes for serious sex or violent offenders, the proposed Commonwealth scheme does not provide for extended supervision orders.

Generally, extended supervisions orders, issued by a Supreme Court in a State or Territory, allow for a range of supervision, monitoring and management conditions to be imposed on high risk offenders after they are released into the community upon the expiry of their sentence. If the Supreme Court considers that the threshold for issuing a continuing detention order has not been met, it may issue an extended supervision order instead. Some of the provisions that might be included in an extended supervision order are reporting regularly to a corrective services officer; residing at a specified address; wearing electronic monitoring equipment, and restrictions around who to associate with or particular classes of persons to associate with. Depending on the jurisdiction, extended supervision orders can last for up to 15 years. Breaching an extended supervision order is a criminal offence.

A senior member of the Australian Federal Police may apply to an issuing court (the Federal Court of Australia, Family Court of Australia[5] or Federal Circuit Court of Australia) for an interim control order to impose obligations, prohibitions and restrictions on a person for the purpose of protecting the public from a terrorist act; preventing the provision of support for or the facilitation of a terrorist act; and preventing the provision of support for or the facilitation of the engagement in a hostile activity in a foreign country.

The issuing court may make the interim control order if it is satisfied 'on the balance of probabilities' that the requirements outlined in paragraphs 104.4(1)(a) to 104.4(1)(c) of the *Criminal Code* have been met (one of the possible requirements is that the person was convicted of a terrorism offence) and that each of the obligations, prohibitions and restrictions imposed by the control order is 'reasonably necessary, and reasonably appropriate and adapted' to meet the purpose set out above.

The terms of a control order may, for example, prohibit a person from being in a specified place, leaving Australia, or communicating with specified individuals; or require the person to remain at specified places at certain times of day, wear a tracking device or report to authorities at specified times and places. Contravening the conditions of a control order is a criminal offence carrying a maximum penalty of five years imprisonment. A confirmed control order can last up to 12 months (or three months if the person is aged between 16 and 18[6]) from the day after the interim control order is made, and successive orders may be issued.

[5] The *Counter-Terrorism Legislation Amendment Bill (No. 1) 2016* (CTLA Bill) which is currently before the Parliament proposes to remove 'the Family Court of Australia' from the definition of issuing court at subsection 100.1(1) of the *Criminal Code*.

[6] The CTLA Bill also proposes amending the control order regime at Division 104 of the *Criminal Code* to allow control orders to be imposed on children as young as 14, with appropriate safeguards for young persons aged 14 to 17.

Under the proposed post sentence preventative detention scheme the Court may make a continuing detention order if the Court is satisfied that there is no less restrictive measure that would be effective in preventing the unacceptable risk to the safety of the community. An example of a less restrictive measure is a control order. However, this will not require an application for a control order to be made or for the Court to consider whether the threshold for obtaining a control order would be met. Rather, the Court would need to be satisfied that the kinds of conditions that may be available under a control order would not be effective in preventing the unacceptable risk of the offender committing a Part 5.3 offence if they were released into the community.

It is not open to the Court to make a control order as an alternative to a continuing detention order under the proposed scheme in the Bill. Subject to the Attorney-General's consent, a senior Australian Federal Police member would need to separately request an issuing court to make an interim control order pursuant to section 104.3 of the *Criminal Code*. This could potentially lead to an undesirable situation in which the offender is subject to two court processes and there is a duplication of effort. One option is to create extended supervision orders under the proposed regime in the Bill that can be made in the alternative to a continuing detention order. Despite the apparent overlap between control orders and continued detention order regimes, there are nuanced differences in focus of the regimes in terms of the persons and behaviour to be managed. An alternative option is to amend the control order regime so that a control order could be obtained as an alternative to a continuing detention order. Both approaches would give the Court greater flexibility to make appropriate orders for managing the risk to the community posed by terrorist offenders.

The Independent National Security Legislation Monitor and the Parliamentary Joint Committee on Intelligence and Security (the Committee) will conduct reviews into the control order regime by 7 September 2017 and 7 March 2018 respectively. Given the detailed and complex policy and practical issues that would need to be explored, it may be better to defer a detailed consideration of how the control order scheme and the proposed scheme under the Bill interact with each other until those reviews occur.

Timing of an application for a continuing detention order

The Bill allows for an application for a continuing detention order to be made within the final six months of the terrorist offender's sentence. The purpose of this requirement is to ensure the offender is given as much time as possible to demonstrate that they no longer present a risk to the community before they are assessed by an independent expert or experts, and ultimately the Court, as to whether they continue to present an unacceptable risk to the community. It also ensures that the assessment is contemporaneous to the Court's determination. This time period requirement has been modelled on the New South Wales, Western Australian and Queensland serious sex offender schemes. The South Australian and Northern Territory schemes have requirements for the application to be filed in the final 12 months of the offender's sentence.

However, jurisdictions that have recently reviewed or are currently reviewing their high risk offender legislation have noted that six months may be too short a time period for:

- the relevant expert or experts to complete an assessment and prepare the necessary report, and
- to allow offenders adequate time to prepare for their hearings, to instruct counsel, analyse evidence and to make arrangements for witnesses to give evidence.

Outlined below is the process to be completed within the final six months of the terrorist offender's sentence pursuant to the current proposed scheme in the Bill:

- An application for a continuing detention order is made to the Court (subsection 105A.6(1)).
- The applicant must, subject to subsection 105A.5(5), give a copy of the application to the offender personally within 2 business days after the application is made (subsection 105A.5(4)).
- A preliminary hearing must be held within 28 days after a copy of the application is given to the offender (subsection 105A.6(2)) for the court to consider appointing one or more relevant experts.
- The relevant expert who is appointed must conduct an assessment of the risk of the offender committing a serious Part 5.3 offence if the offender is released into the community (paragraph 105A.6(4)(a)).
- The offender is required to attend the assessment (subsection 105A.6(5)).
- The relevant expert must provide a report of their assessment to the Court, the Attorney-General and the offender (paragraph 105A.6(4)(b)).
- The Court may hold a hearing to determine whether to make a continuing detention order (subsection 105A.7(1)).

Subsection 105A.9(2) allows the Court to make an interim detention order when the terrorist offender's sentence, or existing continuing detention order, will come to an end before the Court has been able to make a decision on whether to make the continuing detention order, if the Court believes that the matter alleged in the application for the continuing detention order would, if proved, justify making such an order. The interim detention order may last for up to 28 days. Further interim detention orders may be made in relation to the offender, but cannot last for longer than three months in total.

Periodic review

Sections 105A.10 and 105A.11 provide that a continuing detention order must be reviewed by the Court annually (i.e. within 12 months of completion of the last review), or sooner if the terrorist offender applies for a review and the Court is satisfied that new facts or circumstances, or the interests of justice, justify the review.

The periodic review provisions were modelled on Victoria's regular review provisions for continuing detention orders under their serious sex offenders scheme that requires review of a detention order no later than one year after it was first made. Other state schemes allow for a longer regular review period of two years or only have provisions for ad hoc review upon application to the Court.

Some states have noted it has been their experience in relation to their serious sex and violent offender legislation that an annual review of continuing detention orders may:

- create difficulties for corrective services and other relevant service providers in terms of their ability to obtain and provide to the Attorney-General up-to-date evidence for the purpose of these reviews and ensure that any application is made on the best available evidence as to the offender's current risk status, and

- not allow offenders sufficient time to demonstrate a change in behaviour and reduction in risk and for offenders to engage in available programs.

Oversight mechanisms

Legislative oversight

The role of the Independent National Security Legislation Monitor (INSLM) is to review, on his or her own initiative, the operation, effectiveness and implications of Australia's counter terrorism and national security legislation on an ongoing basis.

Counter-terrorism and national security legislation is defined by the *Independent National Security Legislation Monitor Act 2010* (INSLM Act) as including "Chapter 5 of the Criminal Code and any other provision of that Act as far as it relates to that Chapter" which would include the proposed post-sentence preventative detention scheme to be inserted at Division 105A of Chapter 5 of the C*riminal Code*.

Under the INSLM Act, either the Prime Minister or the Parliamentary Joint Committee on Intelligence and Security may refer a matter relating to counter-terrorism or national security to the INSLM to report on. The INSLM Act provides for such reports to be tabled in Parliament.

Operational oversight

State and territories have a number of existing internal and independent operational oversight mechanisms and regimes which oversee the corrective and custodial services generally and the risk assessment and management of high risk violent and sexual offenders subject to continuing detention orders.

These oversight mechanisms and regimes occur periodically, and on an ad hoc basis throughout the offender's prison sentence and in preparation for the offender's post sentence transition.

The Implementation Working Group is considering how the oversight mechanisms in each jurisdiction could be adapted to the proposed scheme in the Bill.

State and territory representatives have provided a number of examples of their current operational oversight mechanisms and regimes.

Ombudsman

In the ACT and NSW, the Ombudsman can investigate a complaint made by a person who is detained in custody and at any reasonable time, enter and inspect a correctional centre.

Independent Bodies/Inspectors

In NSW, the Serious Offenders Review Council (SORC) is an independent statutory authority, which provides advice on the security classification, placement (including segregation directions) and case management of inmates classed as serious offenders. SORC is made up of judicial members, officers of Corrective Services and representatives of the community.

Corrective Services New South Wales (CSNSW) has an Inspector of Custodial Corrections who commenced an investigation into the assessment, management and service provision to prisoners of concern to national

security in 2016. The Inspectorate also has a number of official visitors who routinely visit and report on the conditions (environment, staffing, and service provision) across correctional centres.

In Western Australia, under the *Inspector of Custodial Services Act 2003*, the Inspector of Custodial Services has unfettered access to all custodial sites and may review, at any time, any aspect of custodial services in relation to prisons, detention centres, court custody centres and lock-ups.

In ACT, under the *Official Visitor Act 2012*, two official visitors, including one official visitor who is an Aboriginal or Torres Strait Islander person, must be appointed for the purposes of the *Corrections Management Act 2007*. The role of the official visitor is to receive and investigate prisoner complaints and grievances, and inspect correctional centres and places outside correctional centres where prisoners are for work or certain activities.

In the ACT, the Auditor-General can conduct performance audits in relation to ACT Corrective Services and the Human Rights Commissioner may at any reasonable time, enter and inspect a correctional centre.

Judiciary

In the ACT, a judge or magistrate may, at any reasonable time, enter and inspect a correctional centre.

Review boards / committees

Victoria and NSW have single and multiagency review boards/committees which consider and make recommendations on applications for, and the management of, post sentence orders served both in detention and in the community.

Implementation

Risk assessment tools

The Bill provides that for a terrorist offender to be subject to a continuing detention order, the Court must be satisfied to a high degree of probability, on the basis of admissible evidence, that the offender poses an unacceptable risk of committing a serious terrorism offence if the offender was released into the community.

Various forms of evidence may be admitted to assist the court in making this assessment. This will include evidence from observation of the convicted terrorist during his or her period of imprisonment.

To assist the Court in making this decision, the Court may appoint a relevant expert to conduct an assessment of the risk of the offender committing a serious terrorism offence if they were released into the community. A possible type of expert that will be appointed by a court will have expertise in forensic psychology or psychiatry (and in particular, recidivism) coupled with specific expertise on terrorism, radicalisation to violent extremism and countering violent extremism. The Court must have regard to the expert's report when making its decision. The Implementation Working Group is working to ensure that there is a body of experts available for the proposed scheme.

The state and territory regimes for high risk sex and/or violent offenders similarly provide for an expert or experts to prepare a report for the court which assesses the likelihood of the offender committing a further serious sex or violence offence.[7] Risk assessment tools are used by the expert, in conjunction with their skills and expertise, to support their assessment.

The Implementation Working Group is considering the development of risk assessment tools that could be of assistance to an expert who is undertaking an assessment of an offender under the proposed Commonwealth regime. The existing tools for violent offenders, together with tools that are in use or in development in relation to countering violent extremism, provide a useful starting point.

Currently, there are two tools that have been used in Australia to assist with Countering Violent Extremism intervention programs. The first is the Violent Extremism Risk Assessment (VERA-2) tool which is used to assist in the early identification of risk indicators for violent extremism. The tool can be applied to individuals motivated by a range of different political or religious ideologies. Unlike tools developed in the assessment of sex and violent offenders, the VERA-2 is not an actuarial tool but rather based on a series of questions that relies on the consent of offenders. It was developed by a number of international stakeholders and has been used in the Australian prison context to screen individuals who have been convicted of terrorism offences but it has now been replaced with Radar.

The Radar assessment tool is used to facilitate the initial assessment of individuals in a community setting and develop a tailored intervention plan to help individuals disengage from violence. The tool is also used to measure progress of the individual through the intervention. The primary aim of Radar is to divert individuals from ideologies of hatred and violence before a law enforcement response is needed.

[7] See for example section 14 of the *Crimes (High Risk Offenders) Act 2006* (NSW)

However, it has yet to be determined whether these tools are directly transferrable to a prison setting, particularly in terms of assessing the likelihood of whether a person is likely to commit another terrorism offence upon release. The Implementation Working Group is considering how further work can build upon these existing initiatives to develop a tool that could assist experts under the proposed Commonwealth regime.

No risk assessment tool is determinative, and the skills and expertise of the expert will be critical. The expert will be able to use their structured professional judgement, based on a range of factors, including efforts made by the offender to address the causes of his or her behaviour.

In addition, the Bill provides that the expert report is only one of the matters to which the court must have regard. Other than an expert's report, section 105A.8 provides that the Court must consider:

- any report related to the extent to which the offender can reasonably and practicably be managed in the community, that has been prepared by the relevant State or Territory Corrective Services, or any other person or body who is competent to assess that extent.
- any treatment or rehabilitation programs in which the offender has had an opportunity to participate in, and the level of the offender's participation in such programs.
- the offender's level of compliance with obligations whilst he or she was subject to parole for any offence, a continuing detention order or an interim detention order
- the offender's criminal history and the views of the sentencing court at the time the relevant sentence was imposed, and
- any other information as to the risk of the offender and any other matter the Court considers relevant.

All evidence considered by the Court must be in admissible form but for one exception. Subsection 105A.13(2) provides that despite anything in the rules of evidence and procedure, the Court may receive in evidence in the proceeding, evidence of relevant terrorist offender's criminal history (including prior convictions and findings of guilt in respect of any offences). This provision was modelled on paragraph 45(4)(a) of Queensland's *Dangerous Prisoners (Sexual Offenders) Act 2003.*

Other jurisdictions' schemes have provisions that further modify the rules of evidence. Subsection 25(3) of the *Crimes (High Risk Offenders) Act 2006* (NSW) allows for information provided to the New South Wales Attorney-General on request to be admissible in proceedings under the Act. Paragraph 88(2)(b) of the *Serious Sex offenders (Detention and Supervision) Act 2009*)(Vic) allows the Court to receive in evidence any material relied on in an assessment report or progress report relating to the offender.

Housing of offenders

Commonwealth terrorist offenders serving a custodial sentence are housed in State facilities. The individual security classification that is assigned to a sentenced prisoner determines the type of accommodation and conditions of detention that the prisoner is subject to. Security classifications are determined by a number of factors including the severity of the offence; criminal history including breaches of court imposed orders; institutional disciplinary record and stability; age and attitude towards incarceration; escape history; motivation to address offending behaviour; and internal and external intelligence.

Most of New South Wales's terrorist offenders are housed in the High Risk Management Correctional Centre at Goulburn (HRMCC). It is a designated maximum security facility. Prisoners are usually accommodated in single cells, and have very limited association with other inmates.

Generally all inmates, regardless of their security classification, will have access to visits (professional and personal), welfares services, phone calls, television, reading material, canteen facilities, exercise, education programs, treatment programs and work programs. However the mode of service delivery can be adapted (for example programs provided on an individual basis) or limited on an individual basis to manage specific risks posed by that inmate.

Section 105A.21 of the Bill will provide for the Commonwealth to enter into arrangements with the States and Territories to house an offender who is subject to a continuing detention order.

Section 105A.4 of the Bill provides for the treatment of a terrorist offender in a prison under a continuing detention order including a requirement at subsection 105A.4(2) to house the offender separately from sentenced prisoners.

Subsection 105A.4(1) provides that:

> "A terrorist offender who is detained in a prison under a continuing detention order must be treated in a way that is appropriate to his or her status as a person who is not serving a sentence of imprisonment, subject to any reasonable requirements necessary to maintain:
>
> (a) the management, security or good order of the prison; and
>
> (b) the safe custody or welfare of the offender or any prisoners; and
>
> (c) the safety and protection of the community."

Subsection 105A.4(1) ensures that conditions of detention are not more onerous than is reasonably necessary to maintain the management, security and good order of the prison, the safe custody or welfare of the offenders or any prisoner, and the safety and protection of the community.

Subsection 105A.4(2) provides that:

> "The offender must not be accommodated or detained in the same area or unit of the prison as persons who are in prison for the purpose of serving sentences of imprisonment unless:
>
> (a) it is reasonably necessary for the purposes of rehabilitation, treatment, work, education, general socialisation or other group activities; or

(b) it is necessary for the security or good order of the prison of the safe custody or welfare of the offender or prisoners; or

(c) it is necessary for the safety and protection of the community; or

(d) the offender elects to be so accommodated or detained."

Subsection 105A.4(2) provides that the offender must not be accommodated or detained in the same unit or area of the prison as persons serving sentences of imprisonment unless one of the exceptions applies.

The provisions at section 105A.4 were modelled on section 115 of the *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) that recognises an offender's status as an unconvicted prisoner. No other state or territory sex/violent offender regime has this requirement and offenders subject to orders under those regimes are housed in the same manner as, and together with, prisoners, subject to any security requirements. Offenders subject to a continuing detention order under the Victorian regime are housed in a separate unit within the prison that consists of both single and shared cottage style accommodation.

The Implementation Working Group is considering whether existing state and territory prison accommodation could be adapted for offenders subject to a continuing detention order, and any resource implications this will have. Importantly, all offenders will need to be subject to a risk assessment to determine where the offender can be placed and how they can be managed. This is recognised in section 105A.4 of the Bill which ensures that the security and good order of the prison and safety and protection of the community is not compromised.

Terrorist offenders are likely to be assigned a higher security classification than serious sex offenders and therefore in practice, it may be that it will be necessary to impose a relatively strict detention regime especially as the person is being detained on the basis they have been assessed to present an unacceptable risk of committing a Part 5.3 offence if released into the community.

The Bill does not require purpose built facilities for the detention of terrorist offenders subject to a continuing detention order, however there is the possibility that the scheme will require dedicated facilities. Appropriate professionals and staff would also be required to manage detainees.

The detention conditions imposed on a terrorist offender who is the subject of a continuing detention order may be considered by the Court.

Section 105A.21 of the Bill provides for the Attorney-General to make arrangements with states and territories for the detention of terrorist offenders in relation to who a continuing detention order is in force. The development of these arrangements will take into account jurisdictions' current corrective services frameworks and policies.

Rehabilitation programs

The Bill requires both the Court and an appointed relevant expert to have regard to participation in any rehabilitation program and the level of the terrorist offender's participation in any such programs. This consideration is not limited to deradicalisation or disengagement programs, but can include any program that the terrorist offender may have participated in.

In addition to other treatment programs New South Wales and Victoria each have specific rehabilitation programs catered towards countering violent extremism.

New South Wales

Corrective Services New South Wales (CSNSW) has a number of programs that aim to engage inmates in pro-social and moderate beliefs that are socially acceptable.

CSNSW regularly consults with various community stakeholders and has developed a number of key partnerships to provide programs to at-risk offenders. Several trials have been commenced in NSW prisons and include:

- Friday Prayer Services – CSNSW and Australian National Imams Council commenced a trial where local and respected community Imams attend a number of metropolitan correctional centres to deliver Friday prayers.
- Religious Education – CSNSW and Islamic Science Research Academy developed a program for Muslim inmates in custody that provides them opportunities to undertake a moderate religious education program through a series of modules.
- As set out more fully below, CSNSW will introduce a trial disengagement model in the last quarter of 2016 to target offenders who are at risk of radicalisation to violent extremism. The aim of the PRoactive Integrated Support Model (PRISM) is to develop a disengagement model that can be adapted into any prison context across Australia.
- CSNSW has a number of Chaplains and Imams that also provide pastoral care and referral for support services for Muslim inmates

CSNSW has commenced a trial Parolee Mentoring Program in consultation with Islamic Science Research Academy. The 10 week program is held at a metropolitan community corrections location with a large proportion of Muslim offenders. The program offers offenders moderate Islamic religious intervention and community support housing and employment opportunities.

PRISM

CSNSW is the lead agency in the delivery of the PRISM which is a disengagement model that aims to target inmates who are at risk of radicalisation. PRISM is a trial program that is currently undergoing development, recruitment and training of facilitators. The first group of offenders will comprise approximately 12 inmates and will focus on those offenders nearing release. PRISM will be evaluated as the trial progresses over the next 12 months. It is envisaged that PRISM could form the basis of a national and consistent disengagement model that can be adapted in any prison context. PRISM will incorporate the use of the Radar tools that are currently being used in the community. CSNSW also uses other routine criminogenic assessments (like exploring violence) for the assessment of offenders charged or convicted of terrorism related offences.

Victoria

Community Integration and Support Program (CISP)

CISP aims to rehabilitate imprisoned terrorists by offering a holistic approach to rehabilitation, including both pre and post-release components. Through religious and social engagement with participants, the program seeks to rehabilitate and reintegrate convicted terrorists and prisoners assessed as holding violent extremist beliefs.

Corrections Victoria

The objective of Corrections Victoria (CV) policy for violent extremists is to enable prisoners to disengage from the view that violent means of advancing their views is acceptable rather than seek prisoners to renounce or disavow their extremist views.

If the extremist views remain, yet the prisoner resolves to pursue other means of achieving the desired political or social change, then the intervention is deemed successful.

There are two aspects to CV's disengagement policy:

- maintaining positive, healthy prison environments (in which the conditions which allow or encourage the radicalisation process are eliminated, and violent extremist views are less able to take hold); and

- reducing the level of risk presented by prisoners who are already radicalised to violent extremism by encouraging them to disengage from their violent extremist views.

Corrections Victoria's default position is to integrate violent extremists at a security level appropriate to their risk, and to place them according to their risk and needs.

Violent extremists are closely monitored (by the prison and, where applicable, the Major Offenders Unit) within the protection stream placement, and are transferred to more restrictive environments if they are seen to be attempting to radicalise other prisoners, or promote extremist views on the outside.

The approach to encouraging extremist prisoners to disengage has four elements:

- Religious - dismantling of errant understanding of religious texts and concepts, through programs delivered by scholars, clerics or potentially, in special circumstances, reformed extremists.

- Psychological - ascertaining, confronting and addressing the underlying causes of the terrorists' adoption or retention of extremist views, together with standard psychological interventions (e.g. to assist in coping with imprisonment and grief, alternatives to violence, problem solving, self-esteem, etc.).

- Social - Programs designed to enable the terrorists to return to the community as law-abiding citizens, including practical (educational, vocational skills development) and transitional assistance (work to support the family and social networks into which the detainee will be released, including visits, arranging employment, etc.).

- Protective factors - may be as diverse as facilitating enhanced contact with family members who do not support violent extremism, to ethno-cultural support groups, to sporting or other associations; any of which may work with the prisoner to instil in him (or her) a purpose and a sense of worth in ways other than through subscribing to extremist ideology.

Possible Government amendments

Consideration is being given to three possible amendments to the Bill to ensure the scheme can operate effectively.

Amendment to section 3ZQU of the *Crimes Act 1914*

Section 3ZQU governs the use and sharing of things seized under Part IAA and information and documents produced under Division 4B of the Crimes Act 1914.

It is appropriate that a constable or Commonwealth officer may use things that:

- have been seized under Part IAA or
- the original or a copy document produced under Division 4B

for the performance of a function or duty, or the exercise of a power, by a person, court or other body under, or in relation to a matter arising under, the proposed Division 105A (continuing detention orders) of the *Criminal Code*.

For example, if a search warrant is executed as part of an investigation of possible terrorism offences, it is appropriate that any evidence seized during the execution of that warrant be able to be used to support an application for, or proceedings related to, continuing detention orders. This ensures the Attorney-General, or a legal representative of the Attorney-General, and the Court has all evidence available when making or determining a continuing detention order application in relation to a terrorist offender.

Scope of 'terrorist offender'

The Bill already provides for a continuing detention order to be made in relation to a person who has been convicted of a foreign incursions offence under Part 5.5 of the *Criminal Code*. The offences in Part 5.5 replaced the offences that were under the now repealed *Crimes (Foreign Incursions and Recruitment) Act 1978 (*CFIR Act). An amendment is required to address an oversight in the Bill to ensure that any terrorist offender convicted of an offence under the now repealed CFIR Act who is serving a sentence of imprisonment for that offence may be subject to a continuing detention order.

Minor technical amendment

Two minor technical amendments are required to subsections 105A.21 (1) and (2) to ensure that the Attorney-General can arrange for a terrorist offender in relation to whom an interim detention order is in force to be detained in a prison of a state or territory.

In both subsections 'or interim detention order' will be inserted after 'continuing detention order'.

Attachment A

State and Territory use of Continuing Detention Orders and/or Extended Supervision Orders under sex/violent offender regimes

STATE	LEGISLATION	INDIVIDUALS SUBJECT TO CONTINUING DETENTION ORDERS	INDIVIDUALS SUBJECT TO INTERIM CONTINUING DETENTION ORDERS	INDIVIDUALS SUBJECT TO EXTENDED SUPERVISION ORDERS	INDIVIDUALS SUJBECT TO INTERIM SUPERVISION ORDERS
NSW	*Crimes (High Risk Offenders) Act 2006*[8]	21	Not available	86	Not available
QLD	*Dangerous Prisoners (Sexual Offenders) Act 2003*[9]	21	24	101	0
WA	*Dangerous Sexual Offenders Act 2006*[10]	23	Not applicable	22	Not applicable
SA	*Criminal Law (High Risk Offenders) Act 2015*[11]	0	0	4	0
VIC	*Serious Sex Offenders (Detention And Supervision) Act 2009*[12]	2	0	120	7
NT	*Serious Sex Offenders Act 2013*[13]	2	0	0	0
ACT	N/A - no scheme currently in force				
TAS	N/A - no scheme currently in force				

[8] Figures as at 22 September 2016 and are based at data from 2006 onwards (noting the high risk sex offenders scheme was extended to high risk violent offenders in 2013). *Interim order data has not been provided.
[9] Figures as of 4 March 2016. There have been 171 sexual offenders managed under the DPSOA legislation since its introduction in 2003.
[10] Figures as of 4 October 2016.
[11] Figures as of 12 October 2016
[12] Figures as of 5 October 2016.
[13] Figures as of 5 October 2016.

Attachment B

Number of people who have been convicted of, or are before the courts for, terrorism offences[i]

STATE	OFFENDERS SERVING A CUSTODIAL SENTENCE FOR TERRORISM OFFENCES	PEOPLE BEFORE THE COURTS FOR TERRORISM OFFENCES
NSW	10	21
VIC	6	10
QLD	0	2
WA	0	0
SA	0	0
NT	0	0
ACT	0	0
TAS	0	0
Total	**16**	**33**

[i] A 'terrorism offence' is an offence that is listed under paragraph 105A.3(1)(a) of the Bill.