



Australian Government
Department of Home Affairs

September 2022

Supplementary Submission to the Independent National Security Legislation Monitor’s Review into Division 105A of the Criminal Code Act 1995

Independent National Security Legislation Monitor

Department of Home Affairs

Introduction

1. The Department of Home Affairs (the Department) welcomes the opportunity to provide a supplementary public submission to the Independent National Security Legislation Monitor's (the INSLM) Review into Division 105A of the *Criminal Code Act 1995* (Cth), reflecting the Department's responsibilities under the current Administrative Arrangement Order (AAO) made on 23 June 2022 and taking effect on 1 July 2022.
2. The Department previously provided a joint public submission with the Attorney-General's Department (AGD) to the INSLM on 31 January 2022, with separate public submissions provided by the Australian Security Intelligence Organisation and the Australian Federal Police (AFP). These documents are publicly available on the INSLM's website.
3. This submission addresses issues raised by the INSLM at the public hearing held on 23 June 2022 that fall within the Department's responsibilities under the new AAO. The INSLM requested further guidance on several matters, including:
 - The Department's role as licensee for training and accreditation in the Violent Extremism Risk Assessment 2 Revised (VERA-2R) tool, and implications of this arrangement on independent research; and
 - National consistency in the treatment of offenders subject to Post Sentence Orders (PSOs) under Division 105A.
4. In preparing this submission, the Department consulted the AGD and the AFP.

Department of Home Affairs' support for the High Risk Terrorist Offender (HRTTO) regime

5. Under the AAO, the Department retains responsibility for national security and operations. The Department, through the Counter-Terrorism Coordination Centre (CTCC), leads coordination of Australia's counter-terrorism policy, strategy, and capability development activities across the Commonwealth, states and territories. In its national coordination and capability development role, the CTCC has responsibility for coordination and enabling functions in support of the HRTTO regime.
6. Consistent with this arrangement, the Department has carriage of the HRTTO Regime Implementation Framework (the Framework), which aims to support national consistency in the application of PSOs and inform state and territory funding arrangements, including housing agreements for offenders subject to Continuing Detention Orders (CDOs). The Department acknowledges that each jurisdiction operates within different legislative and policy contexts, and that state and territory authorities are best placed to manage the day-to-day management of individuals subject to PSOs. Through the initial development and implementation of the Framework, and the governance arrangements established under it, the Department has engaged closely with states and territories to determine how the HRTTO regime can be implemented with broad consistency across jurisdictions, leveraging existing capabilities.
7. In line with the Framework, the Department also negotiates state and territory funding agreements which require jurisdictions to establish arrangements that comply with the relevant provisions of Division 105A, including those that interact with international human rights obligations. Specifically, housing agreements established between the Commonwealth and states and territories outline the treatment and management of offenders detained under a CDO to ensure compliance with legislative requirements. In entering these

agreements, the Commonwealth is able to monitor the detention conditions of an individual subject to a CDO through regular, periodic reporting, ad-hoc incident reporting from the relevant state authorities and ongoing engagement with states and territories through HRTO governance arrangements.

8. National implementation of the Framework will be supported by further capability mapping exercises, with a focus on jurisdictions with an anticipated HRTO caseload in the medium term (noting efforts to date have prioritised states with an immediate HRTO caseload). These mapping exercises will inform the Department's ongoing work through Commonwealth budget processes to develop a more sustainable funding model for nationally-consistent HRTO Regime implementation, in consultation with states and territories.

Department of Home Affairs' administration of the VERA-2R and implications for research

9. The Department is responsible for the training and certification of VERA-2R users in Australia. The VERA-2R tool is not only used in Division 105A proceedings by the Commonwealth but also by state and territory partners and private practitioners in law enforcement and corrections in Australia to:
 - assess for offender custodial accommodation and management regimes,
 - inform decisions about rehabilitation and reintegration planning and treatment programs,
 - support parole decisions by the Commonwealth Attorney-General and state or territory parole authorities, and
 - support the New South Wales' *Terrorism (High Risk Offender) Act 2017* post-sentence order matters.
10. The Department acknowledges the importance of further research into violent extremism risk assessment tools, including the VERA-2R, noting the field is relatively nascent. Through the 2021-22 Mid-Year Fiscal and Economic Outlook, the Department received funding to establish a Countering Violent Extremism (CVE) research, risk assessment and training capability to sit within the Department's CTCC. This capability will coordinate and drive best practice for CVE by commissioning research to further develop CVE policies, programs and initiatives, including in relation to violent extremist risk assessment.
11. Intellectual property in the VERA-2R is held by the tool's author, Dr. Elaine Pressman. As such, researchers in Australia wishing to access the VERA-2R and associated materials can make direct requests to Dr. Pressman. The Department has also recently entered into an arrangement with Dr. Pressman to extend the Department's VERA-2R licence to enable provision of the tool and related materials to researchers commissioned by the Department, including for the purpose of conducting validation studies.