Australian Government
Department of Home Affairs

Parliamentary Joint Committee on Intelligence and Security

Review of the Counter-Terrorism Legislation Amendment (2019 Measures No.1) Bill 2019

Department of Home Affairs responses to Questions on Notice.

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PARLIAMENTARY INQUIRY QUESTION TAKEN ON NOTICE:

Parliamentary Joint Committee on Intelligence and Security
Review of the Counter-Terrorism Legislation Amendment (2019 Measures No.1) Bill 2019

Tuesday 27 August 2019

QoN Number: PJCIS/001

Subject: 52 offenders

Question Submitted by: Mark Dreyfus

Question:
The Department's submission refers to 52 offenders who are serving periods of imprisonment for terrorism offences. Please provide the following information in respect of each of the 52 people:

a. What is the person's name?
b. When was the person sentenced? Please provide the day, month and year.
c. Specifically, what offences was the person sentenced for (including any non-terrorism related offences they have also been sentenced for)?
d. When does the non-parole period of the person's sentence expire? Please provide the day, month and year
e. When is the person due for release? Please provide the day, month and year.
f. Has the person been charged with any additional offences while serving their prison sentence? If so, what offences and on what date?
g. Has the person been convicted and sentenced for any additional offences while serving their prison sentence? If so, what offences, on what date, how long is the sentence and how is the sentence for that further offence to be served (i.e. concurrently with the sentence for the period offences or immediately following)?
h. Based on current information, on what date will it be possible for the AFP Minister to apply for a CDO in respect of that person?

Answer:

The Department of Home Affairs will provide this information to the Committee in a classified format. This aligns with the Government's longstanding practice of providing classified information to the Committee about terrorist offenders who may be eligible under the HRTO scheme.

There are a number of reasons why it is not appropriate to provide a consolidated list in an unclassified format:

- The details of a number of offenders have been subject to court suppression and non-publication orders.
- The publication of names and details in relation to eligibility for the HRTO scheme could result in actual or perceived prejudice to relevant decision-making processes and relevant court proceedings. For instance, all eligible offenders will be subject to consideration and decisions about:
    - parole by the Attorney-General;
    - eligibility for, and the appropriateness of, a CDO application by the Minister for Home Affairs;
    - whether or not to grant a CDO, by the relevant Courts;
    - as well as other treatment and rehabilitation options, by relevant agencies.
- Comparable to the post-sentence management of sex offenders, creating a public list of HRTO eligible offenders could also undermine efforts to rehabilitate and reintegrate those offenders back into the community, upon their release post-sentence or post-detention.

There are two additional offenders we are aware of who are currently ineligible for the HRTO scheme because they are serving a concurrent or cumulative sentence which ends after their HRTO-eligible terrorism offence.

The Department is aware that a number of the 52 offenders have been convicted or sentenced on State offences, while in prison or in other circumstances. Based on the Court's determination of when these sentences are to be served, they remain eligible for the HRTO scheme and are not subject to the current loophole.

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PARLIAMENTARY INQUIRY QUESTION TAKEN ON NOTICE:

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Review of the Counter-Terrorism Legislation Amendment (2019 Measures No.1) Bill 2019

Tuesday 27 August 2019

QoN Number: PJCIS/002

Subject: 11 offenders

Question Submitted by: Mark Dreyfus

Question:
The Department's submission also refers to 11 offenders who may become eligible for a CDO between August 2019 and December 2020. That figure was cited by Renee Viellaris in her article entitled "Keep Them Cages". As well as providing all of the information requested above in respect of those 11 people, the questions that Mr Dreyfus wanted the Department to answer yesterday (and which the Department should have taken on notice) are:

> **a.** Did the Attorney-General's Department provide Ms Viellaris with any information in relation to the bill – or in relation to any of the matters referred to in the Attorney-General's press release – in advance of the Attorney-General issuing his press release on 1 August 2019? If so:
> **i.** please provide the Committee with a copy of all of the information that was provided to Ms Viellaris or – if the information was not provided in writing – an account of what information was provided verbally;
> **ii.** who provided that information; and
> **iii.** when that information was provided.
>
> **b.** Did the Department of Home Affairs provide Ms Viellaris with any information in relation to the bill – or in relation to any of the matters referred to in the Attorney-General's press release – in advance of the Attorney-General issuing his press release on 1 August 2019? If so:
> **i.** please provide the Committee with a copy of all of the information that was provided to Ms Viellaris or – if the information was not provided in writing – an account of what information was provided verbally;
> **ii.** who provided that information; and
> **iii.** when that information was provided.

c. Did the Attorney-General or his office provide Ms Viellaris with any information in relation to the bill – or in relation to any of the matters referred to in the Attorney-General's press release – in advance of the Attorney-General issuing his press release on 1 August 2019? I If so:
i. please provide the Committee with a copy of all of the information that was provided to Ms Viellaris or – if the information was not provided in writing – an account of what information was provided verbally;
ii. who provided that information; and
iii. when that information was provided.

d. Did the Minister for Home Affairs or his office provide Ms Viellaris with any information in relation to the bill – or in relation to any of the matters referred to in the Attorney-General's press release – in advance of the Attorney-General issuing his press release on 1 August 2019? If so:
i. please provide the Committee with a copy of all of the information that was provided to Ms Viellaris or – if the information was not provided in writing – an account of what information was provided verbally;
ii. who provided that information; and
iii. when that information was provided.

e. Did Ms Viellaris ask the Attorney-General's Department, the Department of Home Affairs, the Attorney-General or his office or the Minister for Home Affairs or his office how many of the 11 people who were – according to Ms Viellaris – due for release "would benefit under the current loophole"? If so:
i. Who did she ask?
ii. When did she ask?
iii. Exactly how did the Government (whether it be a departmental official, a minister or a minister's office) respond to that request? Both in terms of the method of communication (email, telephone etc) or in terms of the precise content of the communication.
iv. Why didn't the Government (whether it be a departmental official, a minister or a minister's office) provide that information?

f. Did Ms Viellaris ask the Attorney-General's Department, the Department of Home Affairs, the Attorney-General or his office or the Minister for Home Affairs or his office whether the new laws would apply "to the so-called tinnie terrorists, Lodhi or Khazaal ? If so:
i. Who did she ask?
ii. When did she ask?
iii. Exactly how did the Government (whether it be a departmental official, a minister or a minister's office) respond to that request? Both in terms of the method of communication (email, telephone etc) or in terms of the precise content of the communication.
iv. Why didn't the Government (whether it be a departmental official, a minister or a minister's office) provide that information?

Answer:

a. This is a matter for the Attorney-General's Department.

b. On 1 August 2019, the following was provided to Ms Viellaris by Home Affairs Media Operations:
- Since 2001, 76 people have been convicted of terrorism related offences.
- 53 of these people are currently serving custodial sentences.
- It is not appropriate to discuss any individual cases.

c. This is a matter for the Attorney General's Department.

d. The Department is not aware of whether the Minister for Home Affairs, or his office, provided Ms Viellaris with any such information.

e. The Department of Home Affairs did not receive such a request from Ms Viellaris. The Department is not aware of whether the Attorney-General's Department, the Attorney General or his office, or the Minister for Home Affairs or his office, were asked for such information.

f. The Department of Home Affairs did not receive such a request from Ms Viellaris. The Department is not aware of whether the Attorney-General's Department, the Attorney General or his office, or the Minister for Home Affairs or his office, were asked for such information.

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PARLIAMENTARY INQUIRY QUESTION TAKEN ON NOTICE:

Parliamentary Joint Committee on Intelligence and Security
Review of the Counter-Terrorism Legislation Amendment (2019 Measures No.1) Bill 2019

Tuesday 27 August 2019

QoN Number: PJCIS/003

Subject: VERA and expert witnesses

Question Submitted by: Mark Dreyfus

Question:
Mr DREYFUS: Thanks. I wanted to turn to another related matter. The Department of Home Affairs provided an answer to a question on notice that I asked when the previous incarnation of this bill was before the parliament, and that was about two matters. One was the risk assessment tool that supports the continuing detention order regime, about which this committee took detailed evidence in 2016, when the legislation was passed. It's a risk assessment tool that goes by the name of VERA-2 and was developed in Canada, as I understand it. I also asked some questions about the availability of housing arrangements. In the answers that the department provided, dated 15 March, the question was not actually answered. The relevance of this is that the whole basis of the scheme, the continuing detention order regime, is the notion that there is a body of expert evidence that's going to be able to be relied upon by an Australian court before the court can make any order at all, because if there is no body of acceptable expert evidence upon which the court can accept a statement of opinion then the court won't be able to go on to the next stage. This was the matter considered by the committee at length when the original continuing detention order regime, the high-risk terrorist offenders scheme, was considered by this committee and the parliament. I want to ask again if the Department of Home Affairs could provide an actual detailed update that sets out the steps that the department has taken since 2016—originally it was the Attorney-General's Department but it is now the Department of Home Affairs—as to the development of this VERA-2 risk assessment tool, without giving me a generalised answer which doesn't actually provide any information. By that I am referring to the department using this sentence:

> The department is working to build the capacity of specialist staff across the Commonwealth, state and territory government within prisons, juvenile justice, law enforcement and countering violent extremism (CVE) intervention to conduct risk assessments of HRTO eligible offenders. Enhancing experts' knowledge and skills will support their ability to conduct accurate risk assessments of eligible HRTO offenders, assisting the court's consideration of any future CDO proceedings.

There are a couple of further sentences, but they don't tell me anything. If you can tell me anything now, that would be good, but otherwise you can take it on notice. Is there anything you'd like to tell me and the committee now about the development of the risk assessment tool?

Ms Halim: Unfortunately I probably can't add, at this time, any more detail to what you've just said, but I'm very happy to take it on notice.

Mr DREYFUS: I was reading out your words.

Ms Halim: Our words, indeed. We can take that on notice and provide to the committee a bit more information about how the training of specialist staff has progressed since that time.

Mr DREYFUS: It's not just the training of the specialist staff; it's the availability of actual experts that can come before an Australian court to explain the body of expert knowledge upon which an opinion might be based. It's about the availability of experts who might be able to express the opinion upon which a continuing detention order is going to need to be based. I'm looking for specifics, because it is a matter of deep concern to everybody in this committee that this continuing detention order regime actually be able to work. It's something that we've looked at in detail before. I and the whole of this committee maintain a continuing—no pun intended—interest in this matter.

Dr MIKE KELLY: You've got these people preparing legislation. We've got previous legislation. You've set out time lines. There have been all these red lights flashing on urgency. Is your system of expert advice ready to go to support your applications for a CDO in relation to any of these individuals? Is your system ready to go for a CDO application?

Ms Halim: I'm confident now that the department is prepared to work with our colleagues and to manage a CDO application when that time comes.

Dr MIKE KELLY: In relation to this expert advice, the panel process that we talked about previously?

Ms Halim: Indeed. I would like to add here that, when we move to provide advice to government to make a CDO application, we actually give ourselves quite a significant window of time to do that, to make sure that it is done properly and that we are postured and that the courts do have the necessary experts on hand to provide advice if that's required.

Dr MIKE KELLY: Could you provide us with a written summary of what is in place now and the expert advice and how it's structured and the process?

Ms Halim: Indeed. Absolutely.

Answer:

VERA-2R

The Department facilitates training in the VERA-2R tool, delivered by two expert individuals trained and certified by the author of the tool. This includes awareness training, which supports individuals who may need a working knowledge of the tools but will not be using it on a regular basis, such as judges and magistrates.

The Department maintains a governing body to provide expert advice and assistance in the governance and training of the tool. The governing body also assists with retraining and building further capacity in existing users. The Department has developed and maintained a pool of over 130 users since mid-2017, nine of which have substantial expertise in the instrument. This pool covers every state and territory, and also New Zealand.

Expert witness

While a CDO application has yet to be made under the HRTO scheme, the Department nonetheless considers its system of experts to be well placed for such an application. The Department draws this confidence from the common usage of both the VERA-2R methodology and personnel in the similarly constructed NSW Terrorist High Risk Offender (THRO) scheme.

A number of experts successfully supporting the operation of the THRO scheme are also part of the pool and governing body of experts who will support CDO applications. Their expertise has been further developed by using the VERA-2R tool with convicted terrorist offenders and other offenders assessed as radicalised to violent extremism. The outcomes in the THRO scheme have informed the Department’s judgement as to the level of readiness of our system of experts.

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Review of the Counter-Terrorism Legislation Amendment (2019 Measures No.1) Bill 2019

Tuesday 27 August 2019

QoN Number: PJCIS/004

Subject: Detailed process

Question Submitted by: Dr Mike Kelly

Question:
Dr MIKE KELLY: Just to follow up on that, the whole underpinning of this entire CDO regime is to neutralise the threat and not for that to go on indefinitely. I'll take you back to what the committee said about that:

> … Dr Tulich stated that it was crucial for terrorist offenders to be provided with adequate rehabilitation and deradicalisation opportunities in the first instance, so that the application for CDOs would be a last resort.
> She stated that without having those programs in place and available to individuals who are convicted of terrorism related offences that might come under the post-sentence detention regime, then we are setting those individuals up to be subject to potentially indefinite detention.

The committee was at pains to point out that was going to be a critical factor in our consideration of support for the regime and we said that we recognise that procedural fairness in the successive assessment of risk when a CDO is applied for relies on an offender's access to rehabilitation programs and opportunities. We focused on the provision of those in the deliberations of the committee and we were concerned to ensure that appropriate rehabilitation programs and opportunities should continue to be made available to all offenders who are subject to a CDO. This was a central feature of our comfort. Given we're also considering continuing restriction on juveniles et cetera, what progress has been made to ensure that there is a rehabilitation deradicalisation program associated with the CDO regime? What's the latest situation on that? If you'd like to provide us with a written briefing on that, that would be great, but what can you tell us now about that rehabilitation deradicalisation program?
Ms Halim: There isn't a specific deradicalisation program that is associated with a CDO. While there are robust deradicalisation and rehabilitation programs that state and territory governments can provide, these are not linked directly to a CDO. Again, a CDO is used as a last resort in the event perhaps that these programs have not been effective for an individual.
Dr MIKE KELLY: That is absolutely right. It is a last resort on the back of these programs being in place. I would have assumed the Department of Home Affairs and the Attorney-General's Department would keep a very close eye and that there

would be standardisation of this across the Commonwealth given this is a Commonwealth regime of continuing detention orders. But this would be an essential elemental integrated part of this whole process and would form the process of judicial consideration of the granting of each new application. One of the things we highlighted that gave our committee comfort was that there was to be a new process for each continuing detention order application, that it would be then not only based on these assessments of the experts but also rehabilitation and deradicalisation steps. So how can you say you're just leaving this to the states and you don't know what they're doing? Effectively we would need a systematic approach to this, don't you agree?
Ms Halim: Yes. Sorry, I didn't mean to imply that we were leaving it to the states. We do engage the states considerably on our countering violent extremism. It is a collective whole-of-government approach. But it is a case-by-case basis, so each individual is assessed as to their needs and certainly, while they might be serving a CDO, the programs and the strategies are going to be available to them during that time.
Dr MIKE KELLY: Could you provide us with a detailed briefing of what's happening in relation to individuals and in relation to potential CDO applications?
Ms Halim: Of course.

Answer:

Progress on rehabilitation programs associated with the CDO regime

Rehabilitation of violent extremist offenders, including Commonwealth offenders, is the responsibility of state and territory jurisdictions.

Victoria runs the Community Integration Support Program (CISP), a prison-based rehabilitation program for convicted terrorists and prisoners assessed as holding or being vulnerable to radical views. It is funded by the Victorian Government and run by Victoria Police in partnership with a community organisation.

CISP engages participants in a range of pre- and post-release activities involving one-on-one meetings. The program includes engagement to assist preparation for release, and this continues post-release. Participants are supported to reintegrate back into the community through advice and assistance, including help connecting with social security and other services.

Corrective Services New South Wales runs the PRoactive Integrated Support Model (PRISM), a prison-based disengagement program to support the reintegration of ‘at risk’ offenders back into the community, which includes convicted terrorist offenders.

The program is voluntary, run by corrections psychologists, and encompasses a range of services, including religious support. It provides individualised case management plans which target specific factors thought to improve the prospects of disengagement from violent extremism. The VERA-2R risk assessment methodology is used to assess individuals and develop treatment plans, alongside other risk assessment tools.

Process of considering individuals and potential CDO applications

The Department of Home Affairs works with Commonwealth, State and Territory agencies to synthesise operational, legal and policy issues that shape the advice to the Minister for Home Affairs on whether or not to seek a CDO.

An eligible offender's risk is continuously assessed by Commonwealth, State and Territory agencies closely up until the point of their sentence expiry, to ensure the information being considered remains accurate and is up-to-date. Where the offender is not considered a good candidate for a CDO, they will be assessed for alternative post-sentence management options.

Where the Minister considers that an offender poses an unacceptable risk and there are no less restrictive measures to manage the risk effectively, and all other formal legal requirements are satisfied for a CDO, the Minister for Home Affairs may apply to the relevant Court for a CDO within 12 months of the offender's sentence expiry. The Minister's decision is informed by advice provided by relevant agencies.

Although no CDO applications have been made to date, all CDO eligible offenders are, and continue to be, considered for the purposes of determining whether the offender poses an unacceptable risk upon sentence expiry.

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PARLIAMENTARY INQUIRY QUESTION TAKEN ON NOTICE:

Parliamentary Joint Committee on Intelligence and Security
Review of the Counter-Terrorism Legislation Amendment (2019 Measures No.1) Bill 2019

Tuesday 27 August 2019

QoN Number: PJCIS/005

Subject: Housing

Question Submitted by: Mr Dreyfus.

Question:
Mr DREYFUS: Just to complete that, in addition to the information about rehabilitation programs and deradicalisation, which is obviously going to be part of judicial consideration of whether or not to make a continuing detention order, the other part of the exercise of the judicial discretion about making a continuing detention order is going to be whether or not there is available accommodation. This is a matter that this committee and the parliament looked at when the legislation for continuing detention orders passed in 2016, just as the committee was then told by the government that work was being done on VERA 2 and work was being done on expert evidence. Three years have passed. So too we were told that work was being done with state authorities to ensure that suitable housing for people subject to a continuing detention order was going to be made available, and we're looking for an update on that as to the practicalities.
What I was told in the answer to the question taken on notice by Home Affairs in the answer dated 15 March 2019 did not provide me with any information. It was a purported answer; it was not an actual answer. Telling me the department is progressing arrangements with state housing eligible offenders prioritised on the basis of when those offenders may be released is not actually providing information. I'm asking on behalf of the committee for information about housing for people in respect of whom a continuing detention order is made, just as there is in Ararat in Victoria housing that is an annex to the prison at Ararat which is used for people who are the subject of continuing detention orders applicable to sex offenders and that's existing accommodation. I'm not for a moment suggesting that the department or the government thinks that that accommodation is going to be suitable. I'm interested to know, as a follow-up from three years ago—and I have followed it up in the previous hearing of this committee on the previous incarnation of this bill—what housing is available, what arrangements the Commonwealth of Australia has made with state authorities to house people in respect of whom a continuing detention order is made, they being not sex offenders but terrorist offenders. And I'm looking for more than the answer that was provided in March, which was, 'We are talking to the states.' That is not an answer. That's not directed at any of you. I'm asking for the government to provide information to this committee

Ms Halim: Thanks, Mr Dreyfus. That is one we can take on notice, if that suits, and provide an update on where those arrangements are at. All I can tell you today is that we continue to negotiate with states and territories. It is detailed. It is complex in trying to establish how best to house these offenders.

Answer:

Housing arrangements

The detention arrangements for HRTO offenders reflect complex and detailed consultations with a range of agencies, at both a State and Commonwealth level. The arrangements must implement the legislative requirement for these offenders to be housed separately and treated differently to sentenced prisoners (subject to certain exceptions), while respecting the well-established processes and procedures for managing inmates in each state and territory. The availability of opportunities to support the terrorist offender's disengagement from violent ideologies and rehabilitation are also important considerations.

The Department is well-advanced in terms of negotiating housing arrangements with priority jurisdictions, based on the location and release dates of eligible offenders. The Department is not able to elaborate on ongoing State and Territory negotiations in this area, to avoid prejudicing the conclusion of these arrangements.