Australian Government
Department of Home Affairs

Inquiry into the Review of the Counter-Terrorism (Temporary Exclusion Orders) Bill 2019 and the Counter-Terrorism Legislation Amendment 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

15 March 2019

QoN Number: TEO/001

Subject: Home Affairs Submission - TEO

Written
Question Submitted by: The Committee

Question:
Your submission (p. 4) makes clear that the assessment from ASIO under proposed section 10(2)(b)—which may be used as the grounds for the Minister to make a TEO—will not constitute a 'security assessment' under the ASIO Act, as 'the making of the TEO is not a prescribed administrative action'. Could you explain this statement further? What is the status of ASIO's assessment, and what are the consequences of it not being a formal 'security assessment'?

Answer:

As with a range of other counter-terrorism powers, the Bill enables the Minister to take into account a range of information from a variety of sources in considering whether to make a TEO. The provision of intelligence/advice by ASIO under proposed section 10(2)(b) falls within ASIO's existing statutory functions, which are not limited to formal security assessments under Part IV of the *Australian Security Intelligence Organisation Act 1979* (ASIO Act).

If ASIO provides intelligence/advice in relation to the making of a TEO, this will be a communication under Part III of the ASIO Act, rather than a security assessment under Part IV of the ASIO Act. This is because the making of a TEO is not prescribed administrative action (PAA), as defined by section 35 of the ASIO Act, which provides a list of the types of decisions which constitute PAA. The list is limited to certain administrative actions and does not include, for example, other counter-terrorism powers such as the making of control orders, continuing detention orders, or the listing of terrorist organisations.

The consequence of this is that intelligence/advice provided by ASIO will not be subject to review by the Administrative Appeals Tribunal (AAT).

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PARLIAMENTARY INQUIRY QUESTION TAKEN ON NOTICE:

Intelligence and Security

15 March 2019

QoN Number: TEO/002

Subject: TEO Scheme - Procedural Fairness Exclusion

Written
Question Submitted by: The Committee

Question:
What is the effect of excluding procedural fairness from the Minister's decisions under the proposed TEO scheme? Why was this seen as necessary?

Answer:

There are four decision points for the Minister under the proposed TEO scheme:

1. a decision to make a TEO
2. a decision to revoke a TEO
3. a decision to give a return permit, and
4. a decision to vary or revoke a return permit.

The Minister's decision to make a TEO is for the purposes of preventing terrorism-related conduct by a person located outside Australia. Providing procedural fairness in relation to the decision to make a TEO could enable the person to return before a TEO is made, in particular, because the person may be alerted to the Minister's intention to make a TEO, thereby undermining the purpose of the scheme. Further, practical difficulties affording procedural fairness to a person offshore, who may be located in a conflict zone, may also impact on the Minister's ability to make a TEO urgently to prevent a person from returning to Australia without adequate forewarning.

The person may seek judicial review of the Minister's decision to make a TEO. Failure to provide procedural fairness cannot be a ground of review because procedural fairness is excluded.

A person may apply to the Minister seeking revocation of a TEO. Under administrative law, the person's reasons for making such an application must be taken into account as a relevant consideration, and the Minister's decision is also subject to judicial review.

A person may apply for a return permit, and the Minister must give one. As the Minister is required to give a return permit in such circumstances, there is no need for procedural fairness.

As with the TEO, although procedural fairness cannot be a ground of review, once a person has been given a return permit, the person may seek variation or revocation of the permit. Under administrative law, the Minister must take into account any information provided by the person in support of an application for variation or revocation. The Minister's decision is subject to judicial review.

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PARLIAMENTARY INQUIRY QUESTION TAKEN ON NOTICE:

Parliamentary Joint Committee on Intelligence and Security

15 March 2019

QoN Number: TEO/003

Subject: TEO - Judicial Reviews

Written
Question Submitted by: The Committee

Question:
What avenues are available to a person to seek judicial review of a TEO or a return permit, and how would a person go about initiating such a review?
- In the absence of procedural fairness requirements, could any judicial review examine the merits of the Minister's decision to impose a TEO or of the conditions included in a return permit?
- In practice, how could a person challenge the issue of an order if they are not entitled to be told the grounds upon which the order was made and the evidence that was relied upon?
- Could you respond to the Inspector-General of Intelligence and Security's observation at the public hearing that, unlike other actions under the ASIO Act, the Bill does not appear to provide for ASIO assessments under the TEO scheme to be exempt from the Administrative Decisions (Judicial Review) Act 1977(ADJR Act)? What are the potential implications of this for the way that ASIO's advice is treated in any judicial review of a TEO?

Answer:

Review may be sought by filing proceedings for judicial review in the Federal Court or High Court or by making an application for review under the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act) in the Federal Court or Federal Circuit Court.

- Judicial review cannot examine the merits of the Minister's decision to impose a TEO. However, at any time a person may apply for revocation of a TEO and revocation or variation of a return permit. The person's reasons for such an application must be taken into account as a relevant consideration.

- A person subject to a TEO may apply for reasons for decision under section 13 of the ADJR Act. The reasons may not contain some information if the Attorney-General certifies that disclosure of information would be contrary to the public interest. Preliminary discovery may be sought under the Federal Court Rules, with access to sensitive information governed by such orders as the court may make on application by the Commonwealth.

- If ASIO advice is relevant in an application for judicial review, ASIO would claim public interest immunity over all classified information to protect the information from disclosure.

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PARLIAMENTARY INQUIRY QUESTION TAKEN ON NOTICE:

Parliamentary Joint Committee on Intelligence and Security

15 March 2019

QoN Number: TEO/004

Subject: TEO Requirements

Written
Question Submitted by: The Committee

Question:
Would it be contrary to the policy intent of the Bill if the Minister was required, before making a TEO that includes a requirement for the person to surrender their passport, to consider the current circumstances of the person, including whether the person is entitled to stay in the country in which they are located?

Answer:

The making of a TEO is made based on the threat the person poses to the safety of the Australian community. A TEO does not exclude a person from returning to Australia permanently, and thus does not require a person stay in the country in which they are located indefinitely. The person is entitled to apply for a return permit to return to Australia, which must be given by the Minister.

Conditions imposed on a return permit, including a requirement for the person to surrender their passport, must be reasonably necessary, and reasonably appropriate and adapted, for the purpose of preventing terrorism-related conduct. In determining whether the conditions are reasonably appropriate and adapted, the Minister must consider the person's circumstances, which would include whether the person is entitled to stay in the country in which they are located. The rules will provide additional clarity regarding how the Minister may take into account the person's individual circumstances.

A person located in a foreign country is subject to the laws and practices of that jurisdiction. The TEO scheme does not prevent foreign governments from deporting individuals subject to a TEO and a return permit must be granted in that circumstance. Nor does it prevent a person from seeking the assistance of, or refuge in, another country.

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PARLIAMENTARY INQUIRY QUESTION TAKEN ON NOTICE:

Parliamentary Joint Committee on Intelligence and Security

15 March 2019

QoN Number: TEO/005

Subject: Return permit

Written
Question Submitted by: The Committee

Question:
Why are the circumstances in which the Minister must issue a return permit under proposed section 12(1) delegated to rules, rather than being defined in legislation? Could you provide the Committee with a copy of the draft rules (or, if unavailable, a summary of their intended contents)?

Answer:

The circumstances in which the Minister must issue a return permit are defined in the legislation. Subsection 12(1) provides the Minister must give a return permit if:

- the person has applied to the Minister, in a form and manner specified by the rules, for the permit; or
- the person is to be, or is being, deported to Australia.

What is delegated to the rules is the manner and form in which a person may apply for a return permit under subsection 12(1). It is not uncommon for legislative instruments to prescribe the form and manner of an application, as this provides for greater flexibility than prescription under the primary legislation, while ensuring parliamentary oversight through the ability to disallow the legislative instrument.

The rules in relation to subsection 12(1) will balance the requirement for the person to provide sufficient information to inform the giving of a return permit and any condition that may be imposed, with the practical realities which may apply to a person offshore, including a person located in a conflict zone.

- The rules will take into account the varying circumstances of persons who may apply for a return permit, including:
- the location of the person offshore
- the person's ability to access communications
- any representatives of the person (e.g. family or legal representatives), whether in Australia or overseas, and
- any security concerns and implications, including for Australian mission staff.

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PARLIAMENTARY INQUIRY QUESTION TAKEN ON NOTICE:

Parliamentary Joint Committee on Intelligence and Security

15 March 2019

QoN Number: TEO/006

Subject: Return permit conditions

Written
Question Submitted by: The Committee

Question:
The Bill requires the Minister, when imposing conditions on a return permit, to be satisfied that the conditions taken together are reasonably necessary, and reasonably appropriate and adapted. Could you explain why a different approach was taken to the existing control order regime, which requires each obligation to be assessed individually?

- Would it be contrary to the policy intent of the Bill if the Minister was required to consider the conditions on a return permit both individually and collectively?
- Would it be contrary to the policy intent of the Bill if the Minister was required to consider the impact of each condition on the person's individual circumstances, similarly to section 104.4(2)(c) in relation to control orders?

Answer:

The conditions which may be imposed under a control order are significantly more onerous and intrusive than those imposed under the TEO Bill. In particular, a control order enables prohibitions and restrictions to be imposed on the person's associations and activities. A control order may also require a person to do certain things, including wear a tracking device or report to specified persons at specified times and places.

By contrast, the conditions that may be imposed on a return permit do not restrict or prohibit a person from doing certain things or communicating with certain people (with the exception of conditions relating to travel documents). The only requirements which may be imposed on a return permit relate to notifying authorities of prescribed matters, and surrendering travel documents.

A return permit is an interim measure designed to assist authorities to undertake further investigations and determine whether further measures should be taken to mitigate the risk posed by a person to the community. The conditions that may be imposed on a return permit are designed to assist authorities to monitor a person's whereabouts, activities and associations. The conditions reflect that a person is subject to further investigation and assessment. This is in contrast to a control order, where individual conditions are more directly linked to the prevention of terrorism-related conduct.

In determining whether conditions imposed under a return permit are reasonably appropriate and adapted, the Minister would consider the overall impact on a person's individual circumstances of imposing any requirements. Such consideration would give appropriate weight to the imposition of conditions:

- requiring the person to notify authorities of contact with specified individuals (which may occur with some frequency depending on the person's relationship with those individuals); or
- requiring the person to surrender a travel document, or prohibiting the person from applying for or obtaining a travel document (which may impact on the person's ability to visit family members or deal with personal matters overseas).

A requirement that the Minister separately consider the impact of each individual condition on a person's individual circumstances is unlikely to make a significant difference, as the range of conditions that may be imposed on a return permit are significantly less restrictive and onerous than the conditions which may be imposed under a control order.

In relation to paragraph 12(6)(j), paragraph 51 of the explanatory memorandum notes that a once-off notification is sufficient in relation to each service, account or device, and thus it is not anticipated that the notification requirement would be triggered with great frequency once initial notifications relating to existing services, accounts or devices are made.

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PARLIAMENTARY INQUIRY QUESTION TAKEN ON NOTICE:

Parliamentary Joint Committee on Intelligence and Security

15 March 2019

QoN Number: TEO/007

Subject: Warrant powers

Written
Question Submitted by: The Committee

Question:
In 2015, this Committee reviewed the comprehensive warrant powers that were introduced for the purpose of monitoring persons subject to control orders, including search warrants, surveillances device warrants and telephone interception warrants. While the Explanatory Memorandum for the TEO Bill states that the conditions that may be included in a return permit are intended to facilitate monitoring by police and security agencies, there are no specific provisions included in the Bill to enable this monitoring. Why is this not necessary?

Answer:

Specific provisions in the Bill to facilitate monitoring are not necessary because notification conditions in themselves assist monitoring. This is in contrast to monitoring compliance with control orders, where agencies must have the ability to obtain evidence the relevant person has engaged in activities contrary to restrictions or prohibitions. Monitoring of a control order thus requires that agencies have the explicit ability to enter specified premises and conduct covert monitoring.

Breach of a condition of a return permit is an offence punishable by up to two years' imprisonment. Under a return permit, there are two types of conditions which may be imposed: pre-entry conditions and post-entry conditions.

Breach of a pre-entry condition will occur when a person enters Australia in a time and manner other than as specified by the return permit. Monitoring compliance with pre-entry conditions will thus be the responsibility of border and immigration officers, and will not require ongoing monitoring once a person has returned to Australia.

Breach of a post-entry condition imposed under paragraphs 12(6)(a)-(j) will occur when a person fails to notify authorities of certain matters, or provides false information or documents in purported compliance with those conditions. Monitoring compliance with these matters will not necessarily require the use of intrusive law enforcement powers; authorities may discover or be alerted to breaches in a variety of ways. The person and their associates may also continue to be the subject of other security and law enforcement investigations related to their conduct overseas or in Australia.

Breach of a post-entry condition imposed under paragraphs 12(6)(k)-(n) relate to Australian travel documents and monitoring compliance will be the responsibility of the Department of Foreign Affairs and Trade's Passports Office.

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PARLIAMENTARY INQUIRY QUESTION TAKEN ON NOTICE:

Parliamentary Joint Committee on Intelligence and Security

15 March 2019

QoN Number: TEO/008

Subject: Child protection

Written
Question Submitted by: The Committee

Question:
The special requirements in the TEO Bill in relation to children appear to be based on the approach taken in the existing control order regime in Division 104 of the Criminal Code. However, that regime includes additional protections, including mandatory considerations when determining the best interests of child (section 104.4(2A)), a shorter duration order (section 104.28(2)) and a legislated right to legal representation (section 104.28(4)). Why were these further protections for children not included in the TEO Bill?

Answer:
A TEO can only be made in relation to a person who is at least 14 years of age. This is consistent with the control order regime. Where a person is 14 to 17 years of age, the Minister must, as a primary consideration, take into account the best interests of the child, while community safety remains the paramount consideration, consistent with the control order regime.

The flexibility of the TEO scheme is designed to take into account consideration of a person's circumstances at every stage of the process, including the making of a TEO, the duration of which can be for a period of less than the maximum two years. The Minister would take into account the child's age when determining the duration of the TEO. Similarly, the Minister would take into account the child's age when determining the period during which a return permit is to be in force, which may be less than one year following the person's return to Australia.

Conditions imposed on a return permit must be reasonably necessary, and reasonably appropriate and adapted, for the purposes of preventing terrorism-related conduct. This means that the Minister must consider the person's age and personal circumstances in determining any pre-entry or post-entry conditions, including when the person may return. Subsection 12(4) requires the Minister to have regard to the best interests of a person 14 to 17 years of age as a primary consideration, before imposing a condition on a return permit.

The conditions that may be imposed on a return permit are far less onerous than those that may be imposed under a control order. Unlike control order conditions, conditions on a return permit do not prohibit or restrict a person's activities or associations, except to the extent that a person's activities or associations may be impacted by a condition relating to a travel document. The effect on a person's ability to practise their culture, tradition, religion or lifestyle is not as significant as a control order. A return permit imposed on a child will not impact on a child's right to receive an education or practise their religion, or prevent the child from having a meaningful relationship with their family and friends. Unlike a control order, a person, including a child, cannot be required to wear a tracking device or required to participate in specified counselling or education.

A person subject to a TEO or return permit has the right to seek variation or revocation of the TEO or return permit. Under administrative law, the Minister must take into account any information provided by the person in support of an application for variation or revocation, including information related to the person's age and personal circumstances.

Nothing in the TEO Bill restricts the right of a child to obtain legal representation in proceedings relating to the TEO scheme, noting that the making, variation or revocation of a TEO or return permit does not require the involvement of a court. A control order is made by a court (noting that an interim control order may be made ex parte, and the court is not required to appoint legal representation for the child in such proceedings), and the process for confirming a control order involves complex legal proceedings.

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PARLIAMENTARY INQUIRY QUESTION TAKEN ON NOTICE:

Parliamentary Joint Committee on Intelligence and Security

15 March 2019

QoN Number: TEO/009

Subject: TEO Scheme - comparison

Written
Question Submitted by: The Committee

Question:
The proposed TEO scheme has been based on the existing scheme in the United Kingdom. However, it differs from that scheme in a number of ways. Could you outline the reasoning behind the following differences between the two regimes?

- The UK scheme requires the Home Secretary to 'keep under review' whether a TEO remains necessary. There is no similar requirement in the Bill.
- The UK scheme includes specific provisions for judicial review of TEOs and return permits. The Bill is silent in relation to judicial review.
- Under the UK scheme, one of the obligations that may be imposed on an individual is that the person must 'attend appointments with specified persons or persons of specified descriptions'. This could, for example, require attendance at de-radicalisation programs. There is no similar obligation in the Bill.

Answer:

The TEO scheme proposed in this Bill has been developed with Australia's unique security environment and domestic legal settings in mind. Certain provisions, such as the exclusion of persons under the age of 14 years old, are modelled on existing preventative counter-terrorism tools (such as control orders).

- Section 11 of the Bill provides that the Minister may, on the Minister's own initiative or on application by the person to whom the order relates, revoke a TEO at any time. The purpose of this section is to take into account situations where the person's circumstances change, including when the security risk posed by the person no longer exists. If a TEO expires, the making of another TEO is not automatic. One of the two criteria in subsection 10(2) must again be met to make a subsequent TEO.

- Judicial review is available without the Bill expressly providing for it.

- The conditions that may be imposed by a return permit are less restrictive than those that may be imposed under a control order. This appropriately reflects the fact that the person continues to be the subject of further investigation and assessment. An obligation to participate in counselling or education (subject to the person's agreement) is already provided for under the control order regime.

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PARLIAMENTARY INQUIRY QUESTION TAKEN ON NOTICE:

Parliamentary Joint Committee on Intelligence and Security

15 March 2019

QoN Number: TEO/010

Subject: Legislation

Asked
Question Submitted by: The Hon Anthony Byrne MP

Question:
Mr BYRNE: You have mentioned urgency a couple of times. I am seeking to understand how this bill came about. What was the process that was started and by whom, which agency, resulted in this bill coming before us?
Ms Geddes: I need to go back in time. It started with the Department of Home Affairs. We have been working on the content of the bill for a good six to eight months. It came about with the announcement by the minister and the Prime Minister late last year. We have been working very closely with the Attorney-General's Department, the Solicitor-General and other agencies to finalise it.
Mr BYRNE: So the request for the legislation did not come from ASIO?
Ms Geddes: I will have to take that on notice.
Mr BYRNE: Did the request for the legislation come from the AFP?
Mr McCartney: I don't believe so. We were obviously consulted before the process.
Mr BYRNE: In my world, the one that I was used to, generally what would happen was that, when agencies needed a power, they would go to the government and say 'we need this power for this particular reason: question and detention'. Our committee's looked at a lot of these sorts of powers. As I understand it, and you will correct me if I'm wrong, ASIO didn't ask for the power. It looks like the AFP didn't ask for the power. Home Affairs decided that it wanted the power, but it consulted the two agencies after it determined that it wanted the power. I'm just trying to explain. It's a new way of bringing legislation to the parliament; I'm just trying to understand it.
Mr Rendina: For various pieces of legislation, traditionally, perhaps going back many years, the Attorney-General's Department or now Home Affairs—depending on which piece of legislation we talk about—may, in conversation and in being involved in policy discussions with agencies, identify gaps. A gap was identified in this case—

Answer:
The Department of Home Affairs commenced development of a TEO scheme in early 2018. Policy, law enforcement, and security agencies with counter-terrorism functions were first formally consulted on a TEO scheme for Australia in February 2018 during a regular forum chaired by the then Commonwealth Counter-Terrorism Coordinator. The Prime Minister and Minister for Home Affairs announced the Government’s intention to introduce a TEO scheme on 22 November 2018.

Australia's counter-terrorism legislation is under constant review, including through multi agency counter-terrorism forums. Policy, operational and law enforcement agencies collaborate closely to identify gaps and opportunities to strengthen Australia's counter terrorism framework.

Development of the TEO scheme was led by the Department of Home Affairs as the agency with policy responsibility for counter terrorism. AFP and ASIO support the introduction of a TEO scheme, provided advice, and made suggestions and technical amendments relevant to their remit and expertise, during the Bill's development.

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PARLIAMENTARY INQUIRY QUESTION TAKEN ON NOTICE:

Parliamentary Joint Committee on Intelligence and Security

15 March 2019

QoN Number: TEO/011

Subject: Consult Inspector General

Asked
Question Submitted by: The Hon Mark Dreyfus QC, MP

Question:
Mr DREYFUS: Given that this legislation has been in the works for quite some time—you say it's not rushed—is there a reason why none of you thought it appropriate to consult with the Inspector-General of Intelligence and Security? She said she had to find out about this bill from the website of this committee when the inquiry was announced.
Mr Rendina: I think it's something we would need to look at. Part of the response would be that the primary hook for the IGIS would be through the ASIO role, I suspect, but perhaps it's broader than that. We would need to consult and understand from ASIO whether there's been that engagement, and I'm not clear on that.
Mr DREYFUS: Take it from me that the Inspector-General has said, 'No, there wasn't.'
Mr Rendina: I accept that.
Mr DREYFUS: But she had to find out about this bill from the website of this committee. How is it even possible that that occurred in the Commonwealth government of Australia? You're the responsible department for this bill.
Ms Geddes: We'll consult with our portfolio colleagues and get back to you with that one.

Answer:
The Bill enables the Minister to consider advice from security and law enforcement agencies including, but not limited to, ASIO, in determining whether to make a TEO. ASIO's role in providing advice to the Minister in making a TEO (as provided for by the TEO Bill) falls within its existing statutory functions and does not constitute a change to its powers. Accordingly, the IGIS was not consulted as the Bill does not amend existing policy settings in relation to ASIO's powers or expand ASIO's functions.

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PARLIAMENTARY INQUIRY QUESTION TAKEN ON NOTICE:

Parliamentary Joint Committee on Intelligence and Security

19 March 2019

QoN Number: TEO/012

Subject: Solicitor-General's advice - constitutionality

Asked
Question Submitted by: The Hon Mark Dreyfus QC, MP

Question:
Mr DREYFUS: I want to go back to the questions that the chair was asking about the constitutionality. Can the committee be provided with a copy of the Solicitor-General's advice?
Mr Webber: I would have to brief that up. I think it's privileged advice and ought not go onto the public record.

Answer:
It is the longstanding practice of successive governments not to disclose legal advice unless there are exceptional circumstances.

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PARLIAMENTARY INQUIRY QUESTION TAKEN ON NOTICE:

Parliamentary Joint Committee on Intelligence and Security

19 March 2019

QoN Number: TEO/013

Subject: Solicitor-General's advice

Asked
Question Submitted by: The Hon Mark Dreyfus QC, MP

Question:
Mr DREYFUS: Could you ask on behalf of the committee? If the government is not prepared to provide the Solicitor-General's advice to the committee, can a summary of the advice be provided?
Mr Webber: I'll take that on notice as well.

Answer:

It is the longstanding practice of successive governments not to disclose legal advice unless there are exceptional circumstances.

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PARLIAMENTARY INQUIRY QUESTION TAKEN ON NOTICE:

Parliamentary Joint Committee on Intelligence and Security

19 March 2019

QoN Number: TEO/014

Subject: 2017 independent intelligence review

Asked
Question Submitted by: The Hon Mark Dreyfus QC, MP

Question:
Mr DREYFUS: I'd like you to consider this when you do. Before the establishment of the Department of Home Affairs, there was a 2017 independent intelligence review conducted by Michael L'Estrange and Stephen Merchant. It made a number of recommendations directly relating to the Attorney-General's Department. At that time, it had responsibility for national security policy. One of the recommendations was that the Attorney-General's department should:
… convene a meeting involving all relevant departments, agencies and the Office of the IGIS, at least three times a year to align with the Parliamentary sitting periods, to discuss key legislative impediments for agencies in the performance of their functions, legal advices received in the preceding six months and forecasted legislative activity.
Can you tell me if the government has rejected that recommendation.
Ms Geddes: I can't answer that question. I don't know.
Mr DREYFUS: Why not?
Ms Geddes: I would say that they have not rejected—
Mr DREYFUS: Why can't you answer that simple question? Are you really saying, Ms Geddes, that you can't answer that question?
Ms Geddes: No. As I was saying, I don't think they would have rejected it, but I don't have the details. I can get back to you on that.
Mr DREYFUS: You're here from the Department of Home Affairs, so I'll ask a question that relates to you. Since assuming responsibility for national security policy, has the Department of Home Affairs ever convened the type of meeting that the Independent Intelligence Review recommended?
Ms Geddes: I will have to get back to you on that one.

Answer:

The Department of Home Affairs (the Department) continues to consider consultation arrangements between relevant policy, operational and oversight agencies, including the Office of the IGIS, to facilitate discussion of emerging security issues.

The Commonwealth Counter-Terrorism Coordinator manages a number of counter terrorism fora across government, including as chair of the Joint Counter Terrorism Board, which provides strategic advice and supports the coordination of operationally-informed policy development. Throughout the course of developing the TEO scheme, the Counter-Terrorism Coordinator and the Department consulted agencies through these fora, where the policy direction of the proposed scheme was discussed and various suggestions from agencies were considered.

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PARLIAMENTARY INQUIRY QUESTION TAKEN ON NOTICE:

Parliamentary Joint Committee on Intelligence and Security

15 March 2019

QoN Number: CTLA/015

Subject: High Risk Terrorist Offenders Scheme

Asked
Question Submitted by: The Hon Mark Dreyfus QC, MP

Question:
Mr DREYFUS: I want to leap ahead to the continuing detention order regime. This is a matter that the committee considered in a very lengthy previous hearing when the committee recommended unanimously to the parliament that the continuing detention order regime be legislated. It's now in place. It hasn't applied as yet to any prisoner in an Australian jail, but sometime in the next few years it will. Is the department in a position to provide the committee with an update on continuing detention order arrangements, most particularly about two questions which exercised this committee at the time we were last reviewing this legislation? You may not be able to do it now, but, if not, take it on notice.
The first is about accommodation arrangements, and by that I'm referring to the evidence that this committee took previously, which was that there weren't any accommodation arrangements available in Australian jails; there being no federal prisons in Australia, we have to rely on state authorities. You might be able to comment on that. And the second is about the current state of the expert knowledge, which went by the name of VERA-2. The committee was told that it was to be the basis of expert evidence to be given if any of these applications were to be brought. Can you tell me anything now? Take it on notice if you like.
Ms Galluccio: That's a matter for Home Affairs—they're the ones responsible.
Mr Rendina: Thank you, Mr Dreyfus. There is an update; some of it is classified. I'd prefer to take it on notice and provide you with something out of session.
Mr DREYFUS: Thank you. Is there anything that can be made publicly available for the assistance of the public in considering how this relatively novel regime is going to unfold, if and when it does?
Mr Rendina: I think this will answer part of your question: suffice to say that there has been a fair bit of work done, particularly in relation to training the experts in terms of what sorts of skill sets they need to make the assessments. That is being worked through and we've made progress since we've been before you previously. In terms of an update, we can provide you more in detail.
Mr DREYFUS: By all means take it on notice, but could you think of some way to put some of it in a form that's suitable for public use by the committee, possibly in this report that we're now considering—
Mr Rendina: Sure.

Mr DREYFUS: or at some other time? I expect that this committee will have to look at this continuing detention order regime for terrorist offenders on a continuing basis, novel as it is. It's not novel for sex offenders but it's novel for terrorist offenders.
Mr Rendina: It is, yes.
Mr DREYFUS: The more that you can keep us updated the more helpful it will be.
Mr Rendina: I think that's a reasonable request, and we'll work on something for the public.

Answer:
The Department of Home Affairs (the Department) continues to progress implementation of the HRTO scheme, including the development of expertise in, and implementation of, risk assessment tools, and negotiating arrangements for the detention of offenders subject to continuing detention orders (CDOs) under the scheme.

To date, no applications for CDOs have been made. The Department will ensure that relevant arrangements are in place before such an application is made.

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 Department is progressing arrangements with states housing eligible offenders, prioritised on the basis of when those offenders may be released.

Risk Assessment Tools
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.

The Department has focused on training CVE practitioners on the use of the VERA-2R risk assessment tool, which is designed to assess the risks posed by terrorists and violent extremists. The Department will be facilitating awareness raising sessions on VERA-2R in 2019 to support individuals who need a working knowledge of the tool but do not need to use it on a regular basis, such as judges and magistrates.