

Senate Finance and Public Administration Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Supplementary Budget Estimates 2016 - 2017

Prime Minister and Cabinet Portfolio

Department/Agency: Department of the Prime Minister and Cabinet
Outcome/Program: Outcome 2: Indigenous
Topic: Deaths in Custody

Senator: McCarthy, Malarndirri

Question reference number: 122

Type of question: FPA Friday 21 October 2016, page 52

Date set by the committee for the return of answer: 2 December 2016

Number of pages: 14

Question:

Senator Scullion: No. I would love to, but I cannot. When you pass legislation, what the legislation says is that as soon as an Aboriginal person, or someone you think might be an Aboriginal person, comes into custody the first thing you have to do is ring this number. It is a legal aid number, but it may not only be legal services that need to be provided. So they make contact. What I am paying for is, in effect, is a 24-hour service in addition to other legal services. So they are there and they network. They ring your family. They can bring people. They give you the comfort that someone else outside of this system is looking after them. They often go in and see them and generally play an 'amicus' role, and we know that, in those first hours, that is just so important. The evidence is that for the first 15 years of its implementation in New South Wales—New South Wales has legislation for this—there has not been a death in custody, and I am talking about before you get incarcerated, so this is a death in custody issue. But the sad thing, again, is that it is pretty well known that I and those who run that process have been at loggerheads because I am currently paying for something they legislate for. I think it is very useful, and it is very sad that they have not agreed to fund it themselves. We will continue the conversation. On that basis, we have made an offer to all the states and territories that they pass legislation to ensure that you do that. It catches not only whatever the police may get you for but also protective custody. The deal would be that we would pay for a three-year period and after that the agreement would be that they fund that service themselves.

Senator McCARTHY: That is in letters you have written?

Senator SCULLION: Yes. All of the jurisdictions have that offer now.

Senator McCARTHY: Is that public? Can we have a look at it?

Senator Scullion: Well, it is now, Senator.

Senator McCARTHY: Thank you. We could have that on notice.

Answer:

Letters to relevant jurisdictions offering to fund a custody notification service for a period of three years contingent on the introduction of legislation mandating its use and the jurisdiction agreeing to take on funding responsibility at the end of the three year period are as follows:

- Victoria – Attachment A;
- Queensland – Attachment B;
- South Australia – Attachment C;
- Western Australia – Attachment D;
- Tasmania – Attachment E; and
- Northern Territory – Attachment F.

The Minister for Indigenous Affairs, Senator the Hon Nigel Scullion, did not write to the New South Wales (NSW) or Australian Capital Territory (ACT) Governments offering to fund a Custody Notification Service (CNS). NSW already has legislation that requires a Custody Notification Service be available, and the Commonwealth has provided funding to 30 June 2019 for the NSW service. The ACT relies on Commonwealth Legislation, which also already requires a CNS be operated.

Following the death of an Aboriginal woman in protective custody, the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion sent a further letter to the NSW Government asking NSW to consider how their CNS legislation arrangements could be strengthened.



MINISTER FOR INDIGENOUS AFFAIRS

Reference: MB16-000911

The Hon Martin Pakula MP
Attorney-General
Level 26, 121 Exhibition Street
MELBOURNE VIC 300

Dear Attorney-General

I am writing to seek the Victorian Government's agreement to introduce a Custody Notification Service along the lines of the scheme that exists in New South Wales.

As you may be aware, under New South Wales legislation a custody notification manager is required to immediately notify a representative of the Aboriginal Legal Service as soon an Indigenous person is detained. It is a 24-hour service that not only provides legal representation but also mental health and other support that often stabilises volatile situations.

The Custody Notification Service has saved countless lives. Since its introduction in 2000, as a response to the Royal Commission into Aboriginal Deaths in Custody, there has not been a single death in custody when the service has been used. The recent death of Ms Rebecca Maher in New South Wales appears to have occurred in the context of the Custody Notification Service not being used due to a technicality in the operation of the system. This tragic case has further reaffirmed my view about the value of the Custody Notification Service.

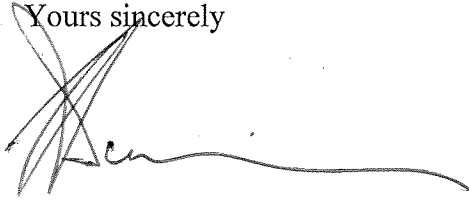
Upon that background, I seek your agreement to introduce the Custody Notification Service in Victoria. This would require both resourcing and legislative change to mandate the use of the Custody Notification Service when an Indigenous person is detained. Consistent with my arrangement in New South Wales, I am prepared to fund a Custody Notification Service in Victoria for three years contingent on your introduction of legislation mandating its use and the Victorian Government agreeing to take on funding responsibility at the end of that period.

This will allow your Government, in the context of state and territory government responsibility for the justice system and incarceration, to assess whether rates of Indigenous deaths in custody have been reduced by the introduction of the Custody Notification Service and whether your ongoing funding of it would represent value for money.

I would appreciate your urgent consideration of this offer. Please note I have written to all other State and Territory Governments with the same offer.

A copy of this correspondence has been provided to the Premier, the Hon Daniel Andrews MP, the Minister for Aboriginal Affairs, the Hon Natalie Hutchins MP and the Attorney-General, Senator the Hon George Brandis QC.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nigel Scullion', with a long horizontal flourish extending to the right.

NIGEL SCULLION

3/18 /2016



MINISTER FOR INDIGENOUS AFFAIRS

Reference: MB16-000911

The Hon Yvette D'Ath
Attorney-General
Level 18, State Law Building
50 Ann Street
BRISBANE QLD 4000

Dear Attorney-General

I am writing to seek the Queensland Government's agreement to introduce a Custody Notification Service along the lines of the scheme that exists in New South Wales.

As you may be aware, under New South Wales legislation a custody notification manager is required to immediately notify a representative of the Aboriginal Legal Service as soon an Indigenous person is detained. It is a 24-hour service that not only provides legal representation but also mental health and other support that often stabilises volatile situations.

The Custody Notification Service has saved countless lives. Since its introduction in 2000, as a response to the Royal Commission into Aboriginal Deaths in Custody, there has not been a single death in custody when the service has been used. The recent death of Ms Rebecca Maher in New South Wales appears to have occurred in the context of the Custody Notification Service not being used due to a technicality in the operation of the system. This tragic case has further reaffirmed my view about the value of the Custody Notification Service.

Upon that background, I seek your agreement to introduce the Custody Notification Service in Queensland. This would require both resourcing and legislative change to mandate the use of the Custody Notification Service when an Indigenous person is detained. Consistent with my arrangement in New South Wales, I am prepared to fund a Custody Notification Service in Queensland for three years contingent on your introduction of legislation mandating its use and the Queensland Government agreeing to take on funding responsibility at the end of that period.

This will allow your Government, in the context of state and territory government responsibility for the justice system and incarceration, to assess whether rates of Indigenous deaths in custody have been reduced by the introduction of the Custody Notification Service and whether your ongoing funding of it would represent value for money.

I would appreciate your urgent consideration of this offer. Please note I have written to all other State and Territory Governments with the same offer.

A copy of this correspondence has been provided to the Premier, the Hon Anastacia Palasczczuk MP, the Minister for Aboriginal and Torres Strait Islander Partnerships, the Hon Curtis Pitt MP and the Attorney-General, Senator the Hon George Brandis QC.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nigel Scullion', with a long horizontal flourish extending to the right.

NIGEL SCULLION

3/18/2016



MINISTER FOR INDIGENOUS AFFAIRS

Reference: MB16-000911

The Hon John Rau MP
Attorney-General
GPO Box 464
ADELAIDE SA 5000

Dear Attorney-General

I am writing to seek the South Australian Government's agreement to introduce a Custody Notification Service along the lines of the scheme that exists in New South Wales.

As you may be aware, under New South Wales legislation a custody notification manager is required to immediately notify a representative of the Aboriginal Legal Service as soon an Indigenous person is detained. It is a 24-hour service that not only provides legal representation but also mental health and other support that often stabilises volatile situations.

The Custody Notification Service has saved countless lives. Since its introduction in 2000, as a response to the Royal Commission into Aboriginal Deaths in Custody, there has not been a single death in custody when the service has been used. The recent death of Ms Rebecca Maher in New South Wales appears to have occurred in the context of the Custody Notification Service not being used due to a technicality in the operation of the system. This tragic case has further reaffirmed my view about the value of the Custody Notification Service.

Upon that background, I seek your agreement to introduce the Custody Notification Service in South Australia. This would require both resourcing and legislative change to mandate the use of the Custody Notification Service when an Indigenous person is detained. Consistent with my arrangement in New South Wales, I am prepared to fund a Custody Notification Service in South Australia for three years contingent on your introduction of legislation mandating its use and the South Australian Government agreeing to take on funding responsibility at the end of that period.

This will allow your Government, in the context of state and territory government responsibility for the justice system and incarceration, to assess whether rates of Indigenous deaths in custody have been reduced by the introduction of the Custody Notification Service and whether your ongoing funding of it would represent value for money.

I would appreciate your urgent consideration of this offer. Please note I have written to all other State and Territory Governments with the same offer.

A copy of this correspondence has been provided to the Premier, the Hon Jay Weatherill MP, the Minister for Aboriginal Affairs and Reconciliation, the Hon Kyam Maher MLC and the Attorney-General, Senator the Hon George Brandis QC.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nigel Scullion', with a long horizontal flourish extending to the right.

NIGEL SCULLION

3/18 /2016



MINISTER FOR INDIGENOUS AFFAIRS

Reference: MB16-000911

The Hon Michael Mischin MLC
Attorney-General
1 Parliament Place
WEST PERTH WA 6005

Mischin
Dear Attorney-General

I am writing to seek the Western Australian Government's agreement to introduce a Custody Notification Service along the lines of the scheme that exists in New South Wales.

As you may be aware, under New South Wales legislation a custody notification manager is required to immediately notify a representative of the Aboriginal Legal Service as soon an Indigenous person is detained. It is a 24-hour service that not only provides legal representation but also mental health and other support that often stabilises volatile situations.

The Custody Notification Service has saved countless lives. Since its introduction in 2000, as a response to the Royal Commission into Aboriginal Deaths in Custody, there has not been a single death in custody when the service has been used. The recent death of Ms Rebecca Maher in New South Wales appears to have occurred in the context of the Custody Notification Service not being used due to a technicality in the operation of the system. This tragic case has further reaffirmed my view about the value of the Custody Notification Service.

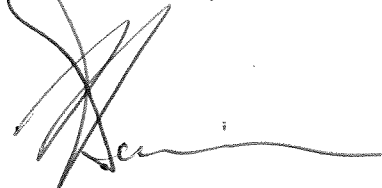
Upon that background, I seek your agreement to introduce the Custody Notification Service in Western Australia. This would require both resourcing and legislative change to mandate the use of the Custody Notification Service when an Indigenous person is detained. Consistent with my arrangement in New South Wales, I am prepared to fund a Custody Notification Service in Western Australia for three years contingent on your introduction of legislation mandating its use and the Western Australian Government agreeing to take on funding responsibility at the end of that period.

This will allow your Government, in the context of state and territory government responsibility for the justice system and incarceration, to assess whether rates of Indigenous deaths in custody have been reduced by the introduction of the Custody Notification Service and whether your ongoing funding of it would represent value for money.

I would appreciate your urgent consideration of this offer. Please note I have written to all other State and Territory Governments with the same offer.

A copy of this correspondence has been provided to the Premier, the Hon Colin Barnett MLA, the Minister for Aboriginal Affairs, the Hon Peter Collier MLC and the Attorney-General, Senator the Hon George Brandis QC.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nigel Scullion', with a large, stylized initial 'N'.

NIGEL SCULLION

3/18 /2016



MINISTER FOR INDIGENOUS AFFAIRS

Reference: MB16-000911

The Hon Vanessa Goodwin MLC
Attorney-General
Level 10, 10 Murray Street
HOBART TAS 7000

Dear Attorney-General

I am writing to seek the Tasmanian Government's agreement to introduce a Custody Notification Service along the lines of the scheme that exists in New South Wales.

As you may be aware, under New South Wales legislation a custody notification manager is required to immediately notify a representative of the Aboriginal Legal Service as soon an Indigenous person is detained. It is a 24-hour service that not only provides legal representation but also mental health and other support that often stabilises volatile situations.

The Custody Notification Service has saved countless lives. Since its introduction in 2000, as a response to the Royal Commission into Aboriginal Deaths in Custody, there has not been a single death in custody when the service has been used. The recent death of Ms Rebecca Maher in New South Wales appears to have occurred in the context of the Custody Notification Service not being used due to a technicality in the operation of the system. This tragic case has further reaffirmed my view about the value of the Custody Notification Service.

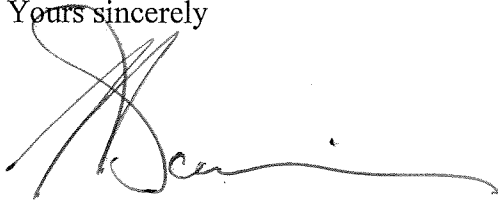
Upon that background, I seek your agreement to introduce the Custody Notification Service in Tasmania. This would require both resourcing and legislative change to mandate the use of the Custody Notification Service when an Indigenous person is detained. Consistent with my arrangement in New South Wales, I am prepared to fund a Custody Notification Service in Tasmania for three years contingent on your introduction of legislation mandating its use and the Tasmanian Government agreeing to take on funding responsibility at the end of that period.

This will allow your Government, in the context of state and territory government responsibility for the justice system and incarceration, to assess whether rates of Indigenous deaths in custody have been reduced by the introduction of the Custody Notification Service and whether your ongoing funding of it would represent value for money.

I would appreciate your urgent consideration of this offer. Please note I have written to all other State and Territory Governments with the same offer.

A copy of this correspondence has been provided to the Premier and Minister for Aboriginal Affairs, the Hon Will Hodgman MP and the Attorney-General, Senator the Hon George Brandis QC.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nigel Scullion', with a long horizontal flourish extending to the right.

NIGEL SCULLION

3/18 /2016



MINISTER FOR INDIGENOUS AFFAIRS

Reference: MB16-000911

The Hon Michael Gunner MLA
Chief Minister Designate
GPO Box 3146
DARWIN NT 0801

Dear Chief Minister ^{MICHAEL} ~~Designate~~

I am writing to seek the Northern Territory Government's agreement to introduce a Custody Notification Service along the lines of the scheme that exists in New South Wales.

As you may be aware, under New South Wales legislation a custody notification manager is required to immediately notify a representative of the Aboriginal Legal Service as soon an Indigenous person is detained. It is a 24-hour service that not only provides legal representation but also mental health and other support that often stabilises volatile situations.

The Custody Notification Service has saved countless lives. Since its introduction in 2000, as a response to the Royal Commission into Aboriginal Deaths in Custody, there has not been a single death in custody when the service has been used. The recent death of Ms Rebecca Maher in New South Wales appears to have occurred in the context of the Custody Notification Service not being used due to a technicality in the operation of the system. This tragic case has further reaffirmed my view about the value of the Custody Notification Service.

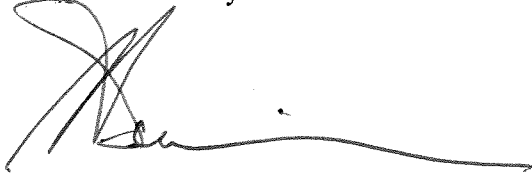
Upon that background, I seek your agreement to introduce the Custody Notification Service in the Northern Territory. This would require both resourcing and legislative change to mandate the use of the Custody Notification Service when an Indigenous person is detained. Consistent with my arrangement in New South Wales, I am prepared to fund a Custody Notification Service in the Northern Territory for three years contingent on your introduction of legislation mandating its use and the Northern Territory Government agreeing to take on funding responsibility at the end of that period.

This will allow your Government, in the context of state and territory government responsibility for the justice system and incarceration, to assess whether rates of Indigenous deaths in custody have been reduced by the introduction of the Custody Notification Service and whether your ongoing funding of it would represent value for money.

I would appreciate your urgent consideration of this offer. Please note I have written to all other State and Territory Governments with the same offer.

A copy of this correspondence has been provided to the Attorney-General, Senator the Hon George Brandis QC.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nigel Scullion', with a long horizontal flourish extending to the right.

NIGEL SCULLION

3/18 /2016