

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

PARLIAMENTARY INQUIRY SPOKEN QUESTION ON NOTICE

Parliamentary Joint Committee on Intelligence and Security
Statutory Review of AFP Powers

25 September 2020

QoN Number: 01

Subject: De-radicalisation programs

Asked by: Mr Andrew Hastie MP

Question:

CHAIR: I know Senator Fawcett's very engaged on this point, so he should feel free to jump in at any time. Can a terrorist offender be compelled to participate in a de-radicalisation program while in prison?

Mr Feakes: No. My understanding is that they can't be compelled to participate in those sorts of programs.

CHAIR: Why isn't that mandatory?

Mr Feakes: I can't answer that. I can take it on notice. But I'm not sure of the reason it's not mandatory.

Answer:

The management and rehabilitation of terrorist offenders is a state and territory responsibility while in prison and on parole. The Australian Government has supported the states and territories to implement and develop rehabilitation programs.

Terrorist offenders are encouraged to participate in rehabilitation programs while incarcerated. Success in these programs, in part, relies on the person's motivation to change and their willingness to evaluate their ideology. We are not aware of any state or territory legislation that mandates participation in programs while offenders are in prison.

In the community, the Government recognises that in some circumstances mandatory participation in rehabilitation and treatment programs may be warranted, in conjunction with other controls, to make every effort to reduce the risk to the community of terrorists reoffending. The Counter Terrorism Legislation Amendment (High Risk Terrorist Offenders) Bill 2020, which is currently before the Parliament, would allow a Court to impose a condition requiring an offender to attend and participate in treatment, rehabilitation or intervention programs or activities, or undertake psychological or psychiatric assessment or counselling.

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25 September 2020

QoN Number: 02

Subject: Decision to utilise VERA tool

Asked by: Dr Anne Aly MP

Question:

Dr ALY: I am familiar with the VERA tool. I would like to ask how you made the decision to utilise VERA, as opposed to some of the other tools that are out there, for example the [inaudible]

Mr Feakes: I'd need to take that on notice—the actual genesis of the VERA tool and the decision-making around why it, rather than another empirical assessment tool, was used. I'd need to take that on notice, unless colleagues can assist.

Dr ALY: If you can't answer that at the moment, it would be useful if you could please take that on notice.

Answer:

In 2016, Australian government agencies adopted the Violent Extremism Risk Assessment Version 2 Revised (VERA-2R) as the principal assessment instrument for the High Risk Terrorist Offender (HRTTO) scheme. This decision was informed by a HRTTO Commonwealth working group, which included a literature review and advice of professional psychologists.

The VERA-2R was chosen as the most appropriate instrument for the HRTTO scheme because it:

- contains a broad range of risk indicators and is not ideologically specific;
- is relatively easy to use and well structured, which enables users to generate comprehensible reports;
- is based upon experience in Australia, Canada and the Netherlands over eight years and has been developed with evidence about terrorist offenders relevant to the HRTTO scheme including a small cohort of Australian convicted offenders.

The instrument is updated regularly to reflect research and practitioner feedback.

Experts may use other methods or instruments alongside VERA-2R when conducting their assessments if relevant to the offender.

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25 September 2020

QoN Number: 03

Subject: Training and usage of VERA tool

Asked by: Dr Anne Aly MP

Question:

Dr ALY: I'd like to know how many people are trained in utilising the VERA tool and how often it has been used, or if it is being used.

Mr Feakes: Again, I'd have to take on notice the actual numbers of how many experts have been trained. I would have to come back to you on how often it's been used as well. I don't want to mislead you; it's better if I give accurate figures.

Answer:

Since 2017, around 200 people have been trained in the use of the VERA-2R instrument. VERA-2R is used in a range of disengagement and rehabilitation programs in the community and in prisons. These programs are designed to support individuals and are not related to legal proceedings.

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QoN Number: 04

Subject: Reviews of VERA

Asked by: Dr Anne Aly MP

Question:

Dr ALY: On that, are you aware of several reviews that have already been done of VERA, comparing it to other tools that are out there? They adequately and correctly point out that VERA-2R was developed based primarily on literature as a source of data, as opposed to empirical evidence and real cases.

Mr Feakes: I wasn't aware of that.

Dr ALY: A review carried out by the International Centre for Counter-Terrorism found that VERA-2R is the only tool that is purely based on literature, not on empirical evidence, compared with the ERG 22+, the SQAT, the IR46, the RRAP, the Radar, and the VAF and the HCR-20, which I already mentioned. Was any of this taken into consideration in the choice of utilising the VERA-2R as a primary mechanism for assessing the possibility of recidivism?

Mr Feakes: Again, I'd need to take that on notice. I'm not aware of the genesis of the decision and the processes undertaken, but I'd be very happy to come back to you with the answers.

Answer:

The VERA-2R is currently based on more than twenty years of academic research and continuous feedback from academics and security, legal and forensic experts and practitioners. This includes experience in Australia and evidence from Australian convicted offenders.

It is difficult to rank violent risk assessment instruments as they have been developed for a variety of purposes, conditions and circumstance. For example, some are designed around prison management needs, other to identify 'lone actors', and some only focus on specific ideologies. Further, instruments used to assess general violence and criminal behaviour do not identify many of the characteristics of violent extremist offenders.

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25 September 2020

QoN Number: 05

Subject: Number of people utilising VERA

Asked by: Dr Anne Aly MP

Question:

Dr ALY: In your submission, on the management of VERA-2R you state: Home Affairs is responsible for the administration of the VERA-2R in Australia. The department coordinates VERA-2R training and certification, and has formed a Community of Practice of Australia's eight VERA-2R trainers to encourage national consistency in VERA-2R use.

Regarding the number of experts used to assess utilising VERA-2R, is it a panel of experts that assesses it, or is one individual expert given the responsibility of assessing an individual?

So what I'm asking is: how many people would utilise the VERA-2R in a single case? Is it a panel or a single person?

Mr Feakes: Again, Senator, I don't mean to be unhelpful, but I'll have to take that on notice. The administration of the VERA-2 program is actually undertaken by another area of the department. I'd be happy to consult with them and come back to you with the answers.

Dr ALY: If you could, because it appears to me that the VERA is a very central mechanism that's being used to determine much of the application of the tools that are available. To me, it appears to be quite an essential component of all of this, and I'm quite astounded actually that there's not more information about how it's utilised, given it's such an essential tool.

Mr Feakes: I'll come back to you with those answers

Answer:

VERA-2R assessments are generated in three ways for the operation of the High Risk Terrorist Offender (HRTO) Scheme:

- historical VERA-2R assessments provide information in the pre-application evidence collection process. For example previous VERA-2R assessments of an offender conducted by a correctional psychologist;
- current VERA-2R assessments by correctional and independent experts can be obtained to inform deliberations about the need for and prospects of a HRTO order; and

- Court appointed experts may use VERA-2R as part of their assessment of the offender and to advise the Court.

VERA-2R assessments may be conducted by a single assessor or a panel.

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QoN Number: 06

Subject: Data on control orders

Asked by: The Hon Mark Dreyfus QC MP

Question:

Mr DREYFUS: I'll start with the control orders. I just want to get some base data. What control orders have been made under this regime since it was introduced?

Mr Feakes: Since 2006 there have been 16 control orders that have been introduced in relation to 15 different individuals.

Mr DREYFUS: How many of those 16 control orders have been contested?

Mr Feakes: I don't have that figure in front of me, but I can take it on notice and let you know

Answer:

Please refer to the Australian Federal Police's QoN Number 6.

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QoN Number: 07

Subject: Refusal of a control order application

Asked by: The Hon Mark Dreyfus QC MP

Question:

Mr DREYFUS: Thanks very much. Has a control order application ever been refused?

Mr Feakes: Again, that might be a question that the AFP are better placed to answer. I don't have details. I don't have that figure. But I assume they would.

Mr DREYFUS: Perhaps you could take it on notice. While you're doing that and answering it, if it has been refused, could you provide details of why it has been refused? What does it cost the Commonwealth to obtain each of these control orders? I don't want the global amount. I don't want all 16. But what does it cost individually?

Answer:

Please refer to the Australian Federal Police's QoN Number 6.

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QoN Number: 08

Subject: Control order proceeding

Asked by: The Hon Mark Dreyfus QC MP

Question:

Mr DREYFUS: Are you able to say how long a typical control order proceeding takes?

Mr Feakes: I'll have to take that on notice too

Answer:

Please refer to the Australian Federal Police's QoN Number 7.

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QoN Number: 09

Subject: Brief of evidence - Control order proceeding

Asked by: The Hon Mark Dreyfus QC MP

Question:

Mr DREYFUS: What about how large a typical brief of evidence in a control order proceeding is? Is it 100 pages or 500 pages or 1,000 pages or 10,000 pages?

Mr Feakes: I don't know. I can find out for you. The AFP would have that. But, again, I can follow that up myself

Answer:

Admissible evidence is required to be adduced in control order (interim or confirmation) proceedings. An application for an interim control order will range from 400-550 pages (for a less complex application) to 4700 pages (for a more complex application). At the confirmation hearing, the Court will have before it the interim application and any additional evidence prepared for the confirmation hearing addressing the facts in dispute. A previous contested confirmation hearing which proceeded by submissions only (no witnesses were called) required an additional 18 affidavits to be filed and served (i.e. in addition to the interim control order application), which could be in the order of an additional 150-200 pages.

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QoN Number: 10

Subject: Contested control order applications - legal assistance

Asked by: The Hon Mark Dreyfus QC MP

Question:

Mr DREYFUS: How many of the respondents to the contested control order applications—the ones that have been contested—have had the means to pay for their own legal assistance?

Mr Feakes: Again, without knowing the answer to your original question—how many have contested—I'm afraid I can't give you an answer to the second question.

Mr DREYFUS: Could you take that on notice?

Mr Feakes: Yes, I can take that on notice

Answer:

Please refer to the Attorney-General's Department's QoN Number 1 and the Australian Federal Police's QoN Number 8.

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QoN Number: 11

Subject: Respondents to the contested control order applications that required legal assistance

Asked by: The Hon Mark Dreyfus QC MP

Question:

Mr DREYFUS: You'll have to take this on notice, but I am interested in knowing how many of the respondents to the contested control order applications have required some form of legal assistance.

Mr Walter: It may be a little bit tricky for us to get that information, because they might have applied, for example, to Legal Aid for assistance, and Legal Aid, quite rightly, won't tell us, because of privacy concerns. We'll see what we can find out by talking to those involved, but it might actually be quite tricky for us to get a definitive answer on that.

Answer:

Please refer to the Attorney-General's Department's QoN Number 1.

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QoN Number: 12

Subject: Accommodation arrangements for continuing detention orders

Asked by: The Hon Mark Dreyfus QC MP

Question:

What arrangements has the Commonwealth made in respect of accommodation for any person who is made the subject of a continuing detention order, noting, of course, that it is not imprisonment or a sentence—it is a different regime. It might be one for Home Affairs.

Mr Feakes: Yes. With respect to Victoria and arrangements for accommodation of those that may be put on a continuing detention order, the Department of Home Affairs are in the process of speaking to Victorian state government officials about such an arrangement.

Mr DREYFUS: Does the accommodation exist?

Mr Feakes: Yes, I believe it does. I would need to take it on notice to provide you details, but the arrangements for which accommodation, we're speaking to Victorian government.

Mr DREYFUS: Which part of the Victorian government?

Mr Feakes: It's the justice department.

Mr DREYFUS: Would you take that on notice. We'd be interested to know in the four years since the committee last looked at this where that question of accommodation has now reached.

Mr Feakes: I'm happy to take that on notice

Answer:

Facilities are available in Victoria and an agreement was signed by the Commonwealth and Victoria in September 2020 to support a continuing detention order application made in the Supreme Court of Victoria.

The Commonwealth is working with the Victorian Department of Justice and Community Safety to finalise an enduring housing agreement that governs housing for all HRTO-eligible offenders subject to a continuing detention order in the state of Victoria.

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QoN Number: 13

Subject: Comparisons to continuing detention order regime

Asked by: The Hon Mark Dreyfus QC MP

Question:

Mr DREYFUS: Great. Dr Neal at the Law Council told us this morning that the reference here to the United Kingdom was somewhat misleading because the United Kingdom regime is one where a sentence is imposed and the time for detention is imposed at the time of sentencing, and it's not a regime that can in any way be compared to a continuing detention order regime. The other thing Dr Neal told us was that there used to be a continuing detention order regime in the UK but it had been repealed for human rights reasons.

Mr Feakes: Yes, I understand that's correct: it was repealed. And I understand, as things currently stand in the UK, the UK can apply extended sentences to life sentences on persons convicted of terrorism offences, but it operates, as you said, in a different way than the CDO regime does here.

Mr DREYFUS: So it's not in any way comparable to our continuing detention order regime. It's imposed at the time of sentencing, isn't it?

Mr Feakes: I'm not sure at what point it's imposed, but it's dissimilar to our program in that respect—the point at which it's determined.

Mr DREYFUS: This is a significant matter. On this committee, we rely on government departments accurately stating the law for us. So I'd like you to take on notice what the Law Council told us this morning and come back to us accurately stating whether or not it's correct to have included the United Kingdom regime at all in a supposedly comparative table, implying, as it does here, that it's somehow comparable. You've just told me, I think correctly, that it's dissimilar, and you've accepted, as was put to us by the Law Council, the length of time that's imposed on convicted terrorist offenders all happens in the United Kingdom at the time of sentence. That means that there isn't a comparable regime in the United Kingdom. Because this is a matter of looking at legislation, I'd appreciate it if you could take it on notice and come back to us in writing correctly stating what the position is in the UK.

Answer:

The Department provided a supplementary submission to this inquiry which included an Attachment A. This attachment included a table entitled “Post-sentence legislation for terrorism offences – Foreign schemes”. The inclusion of Attachment A was intended to provide the Committee with a general picture of schemes available in like-minded countries to address the threat of harm to the community posed by offenders beyond regular sentencing. As outlined below, the purpose and effects of the schemes are broadly similar in that they enable continued detention in prison or the imposition of conditions onto an offender once released.

The UK legislation referred to in the table may, however, be considered to be more analogous to parole and imprisonment for life.

Life Sentences (UK)

A life sentence is an indeterminate sentence with either a significant non-parole period or can apply to the end of a person’s natural lifespan. A life sentence is applied at the time of sentencing to an eligible offender where the Court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission of further specified offences (includes certain terrorism offences).¹ At the end of the non-parole period, the Board must not direct the release of an offender unless the Secretary of State has referred the prisoner’s case to the Board, and the Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.²

Extended Determinate Sentences (UK)

The extended determinate sentence regime permits the Court to apply a longer non-parole period of detention than regular determinate sentences and to apply an extension period where an offender is released subject to licence conditions.³

The Court may apply an extended sentence at the time of sentencing to an eligible offender who the Court considers poses a significant risk of serious harm to the public through the commission of further specified offences (includes terrorism offences).⁴

The extension period (licence), is a period of such length as the Court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the offender of further specified offences (includes terrorism offences).⁵

¹ *Criminal Justice Act 2003* (UK) s 226 (1)(b).

² *Crime (Sentences) Act 1997* (UK) s 28(6).

³ *Criminal Justice Act 2003* (UK) s 226A.

⁴ *Criminal Justice Act 2003* (UK) s 226A (1)(b).

⁵ *Criminal Justice Act 2003* (UK) s 226A (7).

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QoN Number: 14

Subject: Recognised scientific body of evidence

Asked by: The Hon Mark Dreyfus QC MP

Question:

Mr DREYFUS: That's fine. It's the Department of Home Affairs that is saying that it administers this—it's variously described as a tool or a program. Just say if no-one who's here giving evidence can even answer this question, but is there a recognised scientific body of evidence to support the identification of a person's risk of perpetrating a violent extremist act?

Mr Feakes: I'm not aware of a body of scientific evidence, but, again, I can certainly consult the area of the department that may be aware of such a body, and, if there's expertise in that area, they could report to the committee on that.

Mr DREYFUS: There's going to be a pretty big problem, isn't there, coming down the track in the very first continuing detention order application if there isn't a recognised scientific body of evidence, because, if there isn't, it means that no-one will be able to give any admissible opinion evidence about the risk. That's so, isn't it?

Mr Feakes: Yes, I certainly follow your logic.

Mr DREYFUS: And this is a problem that the committee identified when it considered this legislation four years ago. So we haven't advanced—it's still not possible to identify a recognised scientific body of knowledge. Is that right?

Mr Feakes: No, I can't, here and now, identify a significant body of scientific knowledge on the VERA-2 assessment program. As I said, I can certainly consult the area of the department that would have an answer to that question. I can also say that the VERA-2 is not something that is only used by Australia; it's used internationally. But we can have a look at the scientific body of knowledge that would underpin the VERA-2 assessment tool and provide the committee with advice on that.

Answer:

Violent extremism risk assessment instruments have arisen from the need to assess ideologically motivated violent individuals.

To date, violent extremism assessment instruments have been derived from a combination of academic research and practitioner experience.

All current violent extremism risk assessment instruments use a Structured Professional Judgment (SPJ) approach, including the VERA 2R. This approach combines empirical knowledge with professional judgement. SPJ approaches have been identified as the most suitable method for risk assessment of violent extremists by the United Nations Office of Drugs and Crime and The Council of Europe.

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QoN Number: 15

Subject: International use of VERA tool

Asked by: The Hon Mark Dreyfus QC MP

Question:

Mr DREYFUS: You say in paragraph 36:

The VERA-2R is the most widely used assessment tool internationally, including throughout Europe, North America, Australia, New Zealand, and Asia.

That could have been simply that it is being used to design intervention programs and personalised programs directed at lessening an individual's commitment to violent extremism, couldn't it?

Mr Feakes: It could be. It could be used as a risk assessment tool as well. But, yes, it may conceivably be used as a program design tool of the sort that you just mentioned.

Mr DREYFUS: Has this instrument ever been used in a court anywhere in the world to support an application for a continuing detention order?

Mr Feakes: Not that I'm aware of. I could take that on notice and get the answer.

Mr DREYFUS: If you would.

Answer:

The VERA-2R has been used for expert assessments in the New South Wales (NSW) Supreme Court in support of applications made under the NSW Government's Terrorist High Risk Offender Scheme.

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QoN Number: 16

Subject: Details of Implementation

Asked by: The Hon Mark Dreyfus QC MP

Question:

Mr DREYFUS: The sentence that follows that is:

It was implemented in Australia in 2017.

In what sense was it 'implemented'? What does that mean?

Mr Feakes: Again, I'll have to take that on notice and come back to you and the committee with details of that implementation.

Answer:

VERA-2R has been available for use since that time. In 2017 the author of the VERA-2R trained the first cohort of Australian VERA-2R users.

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25 September 2020

QoN Number: 17

Subject: Use of VERA-2R - Publicly employed

Asked by: The Hon Mark Dreyfus QC MP

Question:

Mr Feakes: The majority of VERA-2R users are government professionals in law enforcement and corrections, because that's where most CT and CV practitioners gain experience and expertise.

Mr DREYFUS: Are there any people trained in the use of VERA-2R who are not publicly employed?

Mr Feakes: Again, I'll have to take that on notice and come back to you and the committee.

Answer:

The author of the VERA-2R has trained private psychologists and psychiatrists in New South Wales (NSW).

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QoN Number: 18

Subject: Law enforcement trained in VERA-2R

Asked by: Dr Anne Aly MP

Question:

Dr ALY: Can I jump in and follow up on the answer to the question that Mr Dreyfus just asked? In the submission it says:

The quality of the VERA-2R assessment relies on the expertise of the risk assessor and the information available. To use the VERA-2R, the user must have successfully completed a training course approved by the authors of the VERA-2R. The expert must also have a professional background in psychosocial risk assessment methodologies and an appropriate knowledge of violent extremism, terrorism and radicalisation.

Mr Feakes, are you saying that law enforcement professionals who are trained in VERA-2R also have 'a professional background in psychosocial risk assessment methodologies'?

Mr Feakes: Sorry, could you repeat the last part of the question? You broke up. I didn't catch it.

Dr ALY: You just mentioned in your response to Mr Dreyfus that it was law enforcement professionals who were being trained in VERA-2R, but in your submission it says that it's professionals with a background in psychosocial risk assessment methodologies. Are you saying that every law enforcement official or law enforcement agent who is trained in VERA-2R is also a professional in psychosocial risk assessment?

Mr Feakes: I'd need to confirm whether that's the case for all of them.

Dr ALY: Could you please?

Mr Feakes: I'm very happy to do that

Answer:

VERA-2R experts selected to be used for Court matters are expected to have expertise in psycho-social risk assessment and behaviour change.

The majority, but not all, of VERA-2R users are government employed psychologists. Police and correctional intelligence analysts, social workers and other human

services professionals have also been trained to support:

- assessment for offender custodial accommodation and management regimes;
- decisions about rehabilitation and reintegration planning, and treatment programs;
- law enforcement operations and investigations; and
- the design of tailored intervention programs to disengage at risk people in the community from violent extremism.

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QoN Number: 19

Subject: Witness with expertise

Asked by: The Hon Mark Dreyfus QC MP

Question:

department be able to provide to this committee a witness who has expertise in that field of identifying a person's risk of perpetrating a violent extremist act?

Mr Feakes: I can certainly speak to departmental colleagues and see whether somebody has the expertise you're looking for, and they could be in touch with your office. I'm not aware of anybody, but there may be somebody in the area of the department which administers and manages the VERA-2 program.

Mr DREYFUS: I'm a bit startled by that answer! Attachment C to the joint department submission said that the Department of Home Affairs coordinates VERA-2R training and certification. I'm assuming you've got somebody with some expertise?

Mr Walter: As I said, I'm very happy to find such a person. As I said to Senator Aly before, it's a different area of the department, not in the counter-terrorism coordination centre, though we have a lot to do with them; if there is such a person, they'd be in that area, and I'd be very happy to put them in contact with you and the committee.

Mr DREYFUS: I'm asking if either department will provide such a person, because this is a matter of concern to a number of members of this committee.

Answer:

We note that the Department's responses to the questions on notice provide further information on the Violent Extremism Risk Assessment 2 Revised instrument. The Department is available to provide further information on the instrument if this would assist the Committee.