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PARLIAMENTARY JOINT COMMITTEE ON INTELLIGENCE AND SECURITY

Inquiry into AFP Powers

Questions on notice

25 September 2020

Australian Federal Police

QoN Number: 01

Question:

Dr ALY: Do you know how long the [VERA-2R] training is, what it consists of?

Mr Lee: What the training consists of?

Dr ALY: Yes, or how long it is in terms of hours.

Answer:

The Department of Home Affairs is the lead agency for this activity. The AFP has participated in the delivery of VERA-2R training, which consists of:

- A three (3) day interactive training course on risk assessment with particular reference to violent extremism.
- Completion of a practical exercise in the form of a risk assessment using VERA-2R techniques with a hypothetical case study after the three day course. The case study is reviewed by a member of the Community of Practice (CoP members are all VERA-2R trainers experienced in completing violent extremist risk assessments). If the participant successfully completes the case study they will become VERA-2R users.

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QoN Number: 02

Question:

Dr ALY: Do you consider that in order for somebody to have the level of knowledge that is required to undertake a thorough assessment of whether or not somebody continues to carry violent extremist tendencies could effectively deem them as operative given an opportunity? Would you consider that the level of expertise required for somebody to make that assessment to be achievable with simply through VERA-2R training?

Mr Lee: I don't think I'm necessarily in a position to make a comment on that. It's not my area of expertise. We have people in the AFP who are psychologists with significant experience who have undertaken the training, who are experts in VERA-2R and who have significant experience within counterterrorism, the same as other organisations do, and certainly from our perspective, those people are recognised as having the expertise that we require, but I'm not in a position to make an assessment over and above what they have already made, that that puts them in a position to provide that level of evidence as an expert.

Dr ALY: To be specific, I fully respect that there is that level of expertise within the AFP, and particularly that level of expertise within the psychologists working within the AFP. My concern is more around that VERA-2R training is offered more widely and then is considered as a basis of expertise for making risk assessments that have really significant consequences for community safety as well as for current [inaudible] that exist. On the basis of the evidence given, it seems that there are around 200 people who have received VERA-2R training so far, although we have put that question to Home Affairs. I would like to know how many of those have that level of professionalism and how many don't.

Mr McCartney: As Assistant Commissioner Lee stated, we have some that are trying, but this aspect is not our core responsibility. But we are happy to take that on notice and provide that detail back to you and the committee.

Answer:

What are the qualifications required/what is considered a basis for psychological 'expertise'?

Home Affairs is the lead agency for this activity. The AFP understands that participants come from a range of backgrounds and experiences. A number of VERA-2R users are qualified psychologists or psychiatrists with extensive experience in risk assessment. Additionally those trained may include police officers, analysts and corrections staff.

How many of those trained have expertise in both psychosocial risk assessment and CT/CVE?

Home Affairs is responsible for the training and certification of Commonwealth government employed VERA-2R users.

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QoN Number: 03

Question:

Dr ALY: Are you aware of any CDOs that have been applied to individuals or [inaudible] that are taking place for individuals who are about to be released in the near future who were not charged with terrorism related offences but do exhibit some extreme ideology?

Mr Lee: I'm aware from our New South Wales colleagues that there are individuals in New South Wales where extended supervision orders had been issued under the New South Wales THRO legislation, and I understand there may well have been one continuing detention order issued for a period, but I don't have those details with me. If you did want that detail, we could take it on notice. But we obviously need to clear that material with our New South Wales colleagues as well, if that is okay.

Dr ALY: That would be very useful. Thank you. I'm specifically looking for any orders that have been applied to individuals who were not been charged with terrorism related offences but who are known to have extreme ideologies, including white supremacist and right ideologies.

Answer:

The AFP understand that two (2) CDOs have been issued in relation to individuals who were convicted of offences other than terrorism offences under the *Terrorism (High Risk Offenders) Act 2017* (NSW).

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QoN Number: 04

Subject:

Mr LEESER: I have a couple of questions following up on some of the previous witnesses. I wonder if I could draw your attention to the control order [inaudible] and if you might move through the 16 control orders and give us the factual background linked to the control order? In other words, what were the things that the person, who the control order was sought against, had done? Give us a flavour of what control [inaudible]?

Answer:

1	Joseph Jack THOMAS	<ul style="list-style-type: none"> On 26 February 2006 Mr THOMAS was found guilty in the Victorian Supreme Court of receiving funds from a terrorist organisation and possessing a falsified passport. However, he was found not guilty of more serious charges relating to providing resources to a terrorist organisation. On 27 August 2006, an ICO was issued against Mr THOMAS. Mr THOMAS appealed the ICO however the appeal was rejected. The AFP elected not to confirm the control order following High Court appeal and the ICO remained in place for 12 months.
2	David HICKS	<ul style="list-style-type: none"> In March 2007, Mr HICKS pleaded guilty before a US Military Commission to the offence of providing material support to terrorism. He was convicted and sentenced to seven years confinement. A transfer agreement allowed Mr HICKS to serve out the remaining nine months of the sentence in Australia, and he was released from prison on 29 December 2007. On 21 December 2007, an ICO was issued against Mr HICKS and subsequently confirmed on 19 February 2008, expiring after 12 months.
3	NAME SUPPRESSED	<ul style="list-style-type: none"> In December 2014, the AFP applied for two ICOs against two individuals (names suppressed) who were identified as part of a domestic investigation into potential attack planning and were assessed as a threat to the community. The ICOs were granted however not confirmed as both individuals were subsequently arrested, charged and sentenced to a term of imprisonment. <ul style="list-style-type: none"> One was sentenced to four years and six months imprisonment for 'collecting or making documents likely to facilitate terrorist acts' and 'do acts in preparation for or planning a terrorist act'. One was sentenced to two years six months for breaching control order conditions and five years three months for unrelated state-based offences.
4	NAME SUPPRESSED	
5	Ahmad NAIZMAND	<ul style="list-style-type: none"> Mr NAIZMAND was identified as part of a domestic investigation into potential attack planning and assessed as a threat to the community. In March 2015, the AFP applied for and was granted an ICO. The ICO was subsequently confirmed in November 2015. In February 2016, Mr NAIZMAND was arrested and charged for contravening a control order five times. He was sentenced and served a term of imprisonment.

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6	Harun CAUSEVIC	<ul style="list-style-type: none"> Mr CAUSEVIC was identified as part of a domestic investigation into potential attack planning and assessed as a threat to the community. In September 2015, the AFP applied for and was granted an ICO. The ICO was subsequently confirmed in July 2016 and expired in September 2016.
7	NAME SUPPRESSED	<ul style="list-style-type: none"> In January 2019, the AFP applied for and was granted an ICO against this individual who had completed their head sentence for a terrorism-related offence. The ICO was sought to monitor the risk posed by the convicted offender upon their reintegration to the community. The ICO was confirmed in February 2019 and expired after 12 months.
8	Zainab ABDIRAHMAN-KHALIF	<ul style="list-style-type: none"> In October 2019, Ms Zainab ABDIRAHMAN-KHALIF was released from custody after the conviction for a terrorism offence was overturned on appeal. This decision was appealed by the CDPP. The matter was heard by the High Court in September 2020 and the decision has been reserved. The AFP assessed Ms ABDIRAHMAN-KHALIF continued to pose a risk to the community, and an ICO was obtained and later confirmed in July 2020.
9	Alo-Bridget NAMOA	<ul style="list-style-type: none"> In December 2019, Ms NAMOA was released from custody after completing the head sentence for a terrorism offence. To manage the risk to the community, an ICO was obtained and later confirmed in February 2020. In July 2020, Ms NAMOA was arrested and charged for contravening the control order twelve times. Ms NAMOA has been remanded in custody and the matter remains before court.
10	Murat KAYA	<ul style="list-style-type: none"> In January 2020, Mr KAYA was released from custody after completing the head sentence for a terrorism offence. To manage the risk posed to the community, an ICO was obtained and later confirmed in July 2020.
11	Ahmad NAIZMAND	<ul style="list-style-type: none"> In February 2020, Mr NAIZMAND was released from custody after completing the head sentence for contravening a previous control order. To manage the risk posed to the community, an ICO was obtained and later confirmed in May 2020.
12	Shayden THORNE	<ul style="list-style-type: none"> In March 2020, Mr THORNE was released from custody after completing the head sentence for a terrorism offence. To manage the risk posed to the community, an ICO was obtained and later confirmed in August 2020.
13	Paul DACRE	<ul style="list-style-type: none"> In May 2020, Mr DACRE was released from custody after completing the head sentence for a terrorism offence. To manage the risk posed to the community, an ICO was obtained and later confirmed in June 2020.
14	Kadir KAYA	<ul style="list-style-type: none"> In May 2020, Mr KAYA was released from custody after completing the head sentence for a terrorism offence. To manage the risk posed to the community, an ICO was obtained and later confirmed in August 2020.
15	Antonio GRANATA	<ul style="list-style-type: none"> In May 2020, Mr GRANATA was released from custody after completing the head sentence for a terrorism offence. To manage the risk posed to the community, an ICO was obtained and later confirmed in September 2020.

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16	Belal KHAZAAL	<ul style="list-style-type: none">• In August 2020, Mr KHAZAAL was released from custody after completing the head sentence for terrorism offences.• To manage the risk posed to the community, an ICO was obtained and a confirmation hearing is scheduled to occur in early October 2020.
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QoN Number: 05

Subject:

Mr LEESER: I think it's fair to say that most of the earlier control orders were sought from what is now the Federal Circuit Court, a chapter 3 judge but a lower level chapter 3 judge, [inaudible] referred to [inaudible] was called the Federal Magistrates Court. In more recent times, for the more recent set of control orders, you've [inaudible] Federal Court. Why is that?

Mr Lee: I don't have that detail with me, but I would imagine it's probably more to do with what aspect or what part of the Federal Court may have been available to hear the application for the interim control order rather than the confirmation. So it may well not necessarily have been us making application to that court, but it may have been what court or what judge was available to hear the proceeding. Again, just to make sure as to the detail that I've given you, I'm happy to also take that on notice and just confirm that back to you.

Answer:

For each control order application, the AFP considers whether to apply to the Federal Circuit Court or the Full Federal Court, taking into account advice received from the Australian Government Solicitor (AGS) as to where to commence proceedings.

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QoN Number: 06

Subject:

Mr DREYFUS: What about the so-called tinnie terrorists—to put them as a job lot—which are all of the lost ones, starting with Murat Kaya through to Antonio Granata? Were any of them contested?

Mr McCartney: No. I will get Assistant Commissioner Lee to provide details on those.

Mr Lee: All the interim control orders were granted, and then the orders were confirmed, ultimately, by agreement and with consent.

Mr DREYFUS: So there wasn't even a contest at the interim control order stage?

Mr Lee: I will confirm that, but not as far as I'm aware. We can check that now, if you like.

Mr DREYFUS: I'm trying to get a feel for what has happened in terms of the cost to the Commonwealth. I'm not wanting the answer now—I stress that; I'm very happy for you to take this all on notice.

Mr McCartney: We will follow up on that and come back to you.

Mr DREYFUS: This last group have all been this year, in effect, and some of their cases have been reported. In some of them, they appear to have at least taken points of law. In any event, I'm looking for information about how many have been contested, how many have been refused and why they've been refused. Then I'm looking for an indicative figure as to how much it's cost the Commonwealth to obtain each of these control orders in terms of legal costs, and it does not have to be precise. If you want to estimate a range, that's fine.

Answer:

How many interim control orders have been contested?

No interim control orders have been 'contested' in terms of requiring the calling of witnesses and evidence and requiring further submissions from parties. However, several respondents have *opposed* the making of an interim control order. In some cases, respondents may not oppose the making of the interim control order, but also may not necessarily *consent* to the interim control order.

How many control orders have been refused?

No applications for an interim or confirmed control order have been refused.

How much do control order proceedings cost the Cth?

The cost of the legal proceedings (including preparation of the application for an interim control order and preparation for a confirmed control order) will vary significantly from case to case. However a general guide on costs is below. These are the costs of engaging the Australian Government Solicitor (AGS) and counsel. It does not include the costs of services provided by AFP Legal.

Example 1: A control order which was not opposed at the interim and confirmation stage, and proceeded by submissions only (ie. it did not require calling any witnesses or preparing significant amounts of admissible evidence), incurred a cost of approximately* \$127,000 for AGS services (including counsel).

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Example 2: A control order which was opposed at the interim and confirmation stage, involved the preparation of additional evidence for the confirmation stage, but proceeded by submissions only at confirmation (ie. it did not require calling any witnesses) incurred a cost of approximately* \$354,000 for AGS services (including counsel).

*approximately = The proceedings in examples 1 and 2 continue to incur costs even once confirmed as from time to time they require an application to be made to the Federal Court to vary a control.

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QoN Number: 07

Subject:

Mr DREYFUS: Alright. I have other questions, the answers to which the Attorney-General's Department said you may know better than them. How long does the typical control order proceeding take? I'm asking for some indication about the number of days of hearing. I appreciate that, whether it's Causevic or the other one that was listed, that might be several days, and it is quite different for the ones that are not contested, which I assume are over in a day or less.

Mr Lee: I think you're right, Mr Dreyfus. We can take it on notice just to confirm it for you, but you're absolutely right: it's in the order of a day or two. I think the majority are almost same day, and then potentially the decision is handed down the next day, but we can confirm that detail for you.

Answer:

The duration of the hearing of an application for an interim control order will vary. On average, the hearing will occur over 1-2 days. Often, the decision whether to issue the ICO is reserved.

The duration of the hearing of an application to confirm a control order will vary significantly. For instance:

- An application which is contested, but proceeded by submissions only (ie. no witnesses were called to give evidence) occurred over 2 days and the judgment was reserved.
- An application which was not contested and proceeded by submissions only occurred over 1 day.
- In 2019-2020, no contested confirmation hearing has involved the calling of witnesses. It is anticipated such a hearing would occur over several weeks, depending on the number of facts in dispute and the witnesses required.

In addition to the hearings, each application for an interim and confirmed control order will involve several additional court dates/appearances. These additional appearances may be case management hearings or may involve voir dire/arguments relating to the admissibility of evidence.

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QoN Number: 08

Subject:

Mr DREYFUS: This next one I'm sure you'll have to take on notice, and it goes to the legal assistance question: how many of the respondents in contested control order applications have had the means to pay for their own legal assistance, and how many of those respondents have required some form of legal assistance? I'm trying to get to what the framework is as to the availability of legal assistance, because they're such rarefied proceedings. There are tens of thousands of criminal trials and criminal matters and hundreds of thousands of civil proceedings in Australian courts every year. Control orders are a minute fraction of all proceedings in Australian courts, so they're very much a one-off type of thing, which is why we're trying to get a handle on what is to happen and what's the best way to deal with the need for respondents to control orders to be represented so that we get equality of arms, to use the phrase that's being used. That's what we're trying to get some factual background on, so do what you can on those matters. This is probably more a matter for the Attorney-General's Department, but, if the AFP could provide any assistance on what sort of assistance has been provided to respondents to control order applications, that would be helpful.

Mr McCartney: Yes, we'll take it on notice, but as you said, Mr Dreyfus, I think that's more related to the Attorney-General's Department. But we'll work with them on that question on notice.

Answer:

The AFP notes there have been two contested control order proceedings (at the confirmation stage). The AFP is unable to answer whether these respondents had the means to pay for their own legal assistance and whether they were provided legal assistance, noting the respondents could have received legal aid grants to engage their own private representation. For more information generally on legal assistance for control order respondents, the AFP refers to the response on these issues provided by the Attorney General's Department.

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