

**Senator McEWEN:** With regard to assistance for Australians who have been arrested, charged, or detained in a retentionist country for a crime that could potentially attract the death penalty, earlier in this enquiry we had some commentary from witnesses that the legal advice given to Australians might not be up to scratch. Does either the AFP or the Attorney-General's Department have any role in maintaining a roster of legal advisors in countries where Australians may need assistance? How do people get on the roster? How do you allocate a legal adviser to an Australian in trouble? How do you monitor whether their advice is appropriate or effective, et cetera?

**Ms Hawkins:** The Attorney-General's Department has a scheme that allows an Australian who is facing the situation that you have just described overseas to get some financial assistance. I could arrange for information to be provided to you about that.

**Department's Response:** The Attorney-General's Department administers the Serious Overseas Criminal Matters Scheme. The purpose of this scheme is to provide legal financial assistance for an individual facing an overseas criminal action if:

(a) the individual is being, or will be, prosecuted for a criminal offence for which the individual may be punished by:

(i) a term of imprisonment equal to or longer than 20 years; or

(ii) the death penalty; and

(b) the individual has a continuing connection with Australia.

Assistance under the scheme is akin to legal aid. Decision makers are required to consider whether it is reasonable in all the circumstances to provide a grant, including assessing whether the applicant can afford to pay their own legal costs without incurring serious financial difficulty. Other considerations include the availability of legal aid (or equivalent) and the availability of funds under the legal financial assistance appropriation. The scheme is administered under the *Commonwealth Guidelines for Legal Financial Assistance 2012*, which are publicly available on the Department's website.

The Attorney-General's Department does not maintain a roster of overseas legal advisors or recommend any particular legal professionals. Individuals applying for assistance need to nominate their own legal representative and inform the Department.

The Attorney-General's Department works closely with the Department of Foreign Affairs and Trade to ensure Australians who are charged with a serious offence overseas receive information about the availability of legal financial assistance under the scheme, including details of how to apply for a grant of assistance.

**Senator McEWEN:** So you do not keep a roster of legal advisors?

**Ms Hawkins:** It is in another area of the department, so I think it is probably safer for me to take that notice, and get back to you about how the assistance scheme operates. I understand that it does involve financial—

**Senator McEWEN:** So you know there is a pool of money but you do not know how it is expended?

**Ms Hawkins:** I will need to get back to you about the detail of that.

**Department's Response:** The Serious Overseas Criminal Matters Scheme is administered alongside 23 other statutory and non-statutory schemes of Legal Financial Assistance. All 24 schemes are administered under a single appropriation; in 2015-16 that appropriation is \$3.784 million. The schemes are demand driven and applications are open at all times.

Applications for grants of assistance under the Serious Overseas Criminal Matters scheme are assessed under the *Commonwealth Guidelines for Legal Financial Assistance 2012*, and the *Commonwealth Legal Financial Assistance Schemes Assessment of Costs July 2012*. Both documents are available publicly from the Department's website.

The Department must assess whether it is reasonable in all the circumstances to provide a grant. If a grant is provided the Department must make an assessment of how much assistance is reasonable, including consideration of hourly rates for legal representatives that are comparable to those paid in Australia. Rates paid in Australia are akin to legal aid and are less than full commercial rates.

Payments under grants of legal financial assistance are paid in arrears once the Department is invoiced for work completed. All invoices are assessed against the original grant offer and excessive costs are refused.