

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO

Program: Australian Human Rights Commission

Question No. BE16/007

Senator McKim asked the following question at the hearing on 5 May 2016:

Senator McKIM: Thank you, Chair. Professor Triggs, noting that 'succinct' is in the eye of the beholder I ask you, firstly, is the Human Rights Commission aware of the communique out of the April COAG meeting that the Commonwealth will draft legislation for a post-sentence preventative detention scheme, secondly, has the commission been consulted, or is the commission aware of any intent that it be consulted, on this scheme or on the legislation and, finally, does the commission have a view of whether a post-sentence preventative detention scheme would be in breach of any of Australia's international human rights obligations?

Prof. Triggs: I am aware of that COAG decision. We have not been consulted, although perhaps if I could say more broadly partly as a consequence of the universal periodic review process before the Human Rights Council we are working both with the Attorney-General's Department and the department of foreign affairs on a number of matters that have arisen out of that. I do not want to suggest by not being consulted on this that we are never consulted—we are. But on this matter, as far as I am aware, no.

I would like to take your question on notice. You will be well aware that I have been speaking for a very long time about my concern at what I believe is an over-reach of executive discretion in rearresting after a prison sentence has been served for a further period without trial or supervision by a judge. I keep coming back to that principle. We have a number of cases in the commission where people have been held in administrative detention with cognitive intellectual disabilities where they have never been sentenced at all or, as I am sure you are familiar, those with sexual offences have been detained in administrative detention after they have served their sentence, and there are other cases. We do not deny the right of the executive government to hold individuals where it might be necessary for both their own personal safety and the safety of the Australian community. We fully understand that but we do say—and I am speaking generally—that we need proper judicial or independent tribunal supervision of these kinds of detentions because we are detaining people—very often in prisons—when they have never been charged with an offence.

With regard to this particular matter, I would like to see what drafting emerges because to answer in the abstract, as I have done, is not very satisfactory. If we have a precise program then we will respond from the Australian Human Rights Commission's position. We do respond to provisions of this kind in other contexts regularly, and I will be very happy to send you the materials and submissions we have already made on this broad question of detention without trial or administrative detention and the kinds of safeguards that we think need to be built around it.

Senator McKIM: Thank you, Professor. I would appreciate that.

Prof. Triggs: Thank you very much.

The answer to the honourable senator's question is as follows:

The Commission is aware of the proposed legislation through media reports, but has not been directly consulted in the development of the proposed bill. We are unable to comment in abstract, but envisage we will consider the bill once it is publicly available, and will consider making a submission on the bill to the relevant committee review process.