



*Australian Council
for Civil Liberties*

**Legal and Constitutional Affairs
Legislation Committee**

**Inquiry into the Independent
National Security Legislation Monitor
(Improved Oversight and Resourcing)
Bill 2014**

9 February 2015

*A combined submission from:
NSW Council for Civil Liberties
Liberty Victoria
Queensland Council for Civil Liberties
South Australian Council for Civil Liberties
Australian Council for Civil Liberties*

**SUBMISSION OF CIVIL LIBERTIES COUNCILS ACROSS AUSTRALIA TO THE SENATE STANDING
COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE INQUIRY INTO
THE INDEPENDENT NATIONAL SECURITY LEGISLATION MONITOR (IMPROVED OVERSIGHT AND
RESOURCING) BILL 2014**

1. The councils for civil liberties across Australia¹ ('the CCLs') support this Bill to preserve and enhance the role of the Independent Security Legislation Monitor ('the Monitor') through amendment of the *Independent National Security Legislation Monitor Act 2010* ('the *INSLM Act*').
2. The Monitor is an important statutory position; the purpose of which is to provide independent expert advice as to whether Australia's counter-terrorism and national security legislation provide appropriate safeguards to protect individual human rights, are proportionate to the threats faced, and are necessary.
3. The CCLs welcome amendments of the *INSLM Act* to: extend powers of the Monitor to review proposed as well as existing counter-terrorism and national security law; make it an object of the Act that the Monitor is required to consider whether Australia's national security legislation is proportionate to the security threat faced; enable the Senate Committees on Legal and Constitutional Affairs and the Human Rights Commissioner to refer matters to the Monitor for inquiry.
4. In addition, the CCLs welcome amendments of the *INSLM Act* that the appointment of the Monitor is on a full time basis, the position cannot be left vacant, and that the Monitor is appropriately supported by staff.
5. The CCLs support amendments that Government is required to respond to recommendations contained in all reports tabled by the Monitor to Parliament within six months.

The INSLM Act

6. The *INSLM Act*, enacted in 2010 with bipartisan support from the major parties and the Greens, established the role of the Monitor.
7. The Monitor's role is to assist Ministers to ensure that Australia's counter-terrorism and national security legislation is: effective in preventing and deterring terrorism and terrorist related activity; responsive to terrorist and terrorism related activity; consistent with Australia's

¹ Liberty Victoria, New South Wales Council for Civil Liberties, Queensland Council for Civil Liberties, South Australia Council for Civil Liberties and the Australian Council for Civil Liberties.

international human rights, counter-terrorism and security obligations, and contains appropriate safeguards to protect individual rights.

8. To this end, the Monitor should consider: whether such legislation contains appropriate safeguards to protect human rights; is proportionate to terrorism and national security threats; and is necessary.
9. In compliance with the Act's reporting requirements the Monitor, formerly Mr Bret Walker SC, has provided the Prime Minister with four annual reports which have in turn been tabled in Parliament. The Act contains no provisions with respect to the Prime Minister's duties vis-à-vis recommendations made by the Monitor.
10. In March 2014, the Government unsuccessfully attempted to repeal the *INSLM Act*.
11. Since April 20 2014, the position of Monitor has been vacant following the expiry of Monitor's three-year appointment.
12. During the period that has followed, a number of significant counter-terrorism and national security laws have come before parliament, including the *National Security Legislation Amendment Act (No. 1) 2014*, *Counter Terrorism Legislation (Foreign Fighters) Amendment Act 2014* and the *Telecommunication Legislation (Data Retention) Amendment Bill 2014*.
13. The non-appointment of a new Monitor, especially at a time of significant legislative reform, is clearly at odds with the objects of the *INSLM Act*. Furthermore, the continued absence of independent expert advice to Government, with respect to the human rights implications of counter-terrorism and national security legislation, and the proportionality and necessity of such legislation, removes an important safeguard to maintenance of human rights in Australia.
14. The proposed amendments to the *INSLM Act* will significantly restore to the Monitor powers intended by this statute. The CCLs accordingly support this Bill.

Promotion and Protection of Human Rights and Civil Liberties

15. Maintaining and preserving civil liberties and human rights, while at the same time combating terrorism and terrorist activity, present complex and challenging legislative and policy decisions for government.
16. Counter-terrorism and national security laws, designed to prevent and prohibit terrorist acts and other threats to national security aimed at the destruction of human rights, freedoms and democracy, may themselves, if not carefully monitored, violate human rights and be contrary to the rule of law.

17. Further, such laws which, in part, empower law enforcement and intelligence agencies to deter, prevent and disrupt activities that would endanger the safety or lives of the Australian Community, similarly require independent assessment and scrutiny to prevent erosion of human rights and civil liberties.
18. As noted in the Explanatory Memorandum, the Parliamentary Joint Committee on Human Rights indicated that the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014 has significant impact on human rights.
19. The CCLs have stated in the Council for Civil Liberties joint submission in relation to the Foreign Fighters Bill of the negative impact on counter-terrorism laws with respect to human rights.²
20. For the reasons set out above, the CCLs support the preservation and enhanced powers of the Monitor contained in this Bill.

Comments on Specific Clauses

21. Item 1 Section 3: the CCLs support this amendment. It is appropriate that the Monitor provide advice in respect the effectiveness and implications of proposed counter-terrorism and national security legislation as well as for existing legislation.
22. The amendment provides efficacy to the role of the Monitor and provides for the timely provision of advice prior to the enactment of legislation. The provision has the potential to make legislation more effective and not harmful and provides opportunity for government to better meet the Act's objects.
23. Items 3 and 4: the CCLs support these amendments which give effect to the proportionality provisions of the Act in relation to the function of the Monitor to provide advice in relation proposed legislative enactments.
24. Items 7 to 9 make it clear that it is the Monitor's role to provide Parliament and the public with an expert, independent assessment of any proposed new counter-terrorism or national security laws and whether such laws are being used for matters unrelated to terrorism and national security before they are enacted. The CCLs support this expansion of the Monitor's powers.
25. Item 10 facilitates referral and dialogue between the Australian Human Rights Commission and the Monitor. Enhanced communication between the Monitor and the Human Rights Commission will undoubtedly enable the Monitor to better assess the human rights impact of proposed and existing counter-terrorism or national security laws on human rights. The CCLs support this

² Submission of Civil Liberties Councils across Australia to the Parliamentary Joint Committee on Intelligence and Security Inquiry into the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill, 3 October 2014.

amendment. Further, the CCLs support amendments to the Australian Human Rights Commission Act as set out in Schedule 2, to ensure that it is a function of the Commission to make a referral of a matter to the Monitor for report and inquiry.

26. Items 11 to 13 provide for referral of matters by a Committee on Legal and Constitutional Affairs to the Monitor for review and inquiry and bodies and agencies with which the Monitor may consult when performing his or her duties. These proposed amendments widen the independent character of the Monitor by broadening the base to which it can provide expert advice. The CCLs support these amendments.
27. Items 14 to 17 provide for appropriate resourcing of the position of Monitor. The CCLs support these amendments as they provide efficacy to the role.
28. Items 18 to 21 provide for the Prime Minister to respond to the Monitor setting out the action that the Government intends to take in relation to reports from the Monitor. These amendments provide for accountability from the Government with respect to objects of the *INSLM Act*, whether such laws contain insufficient human right protections, are disproportionate in relation to the threat they seek to address, and remain necessary.

Yours sincerely

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