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Commonwealth
OMBUDSMAN 

Level 5, 14 Childers Street ■ Canberra
GPO Box 442 ■ Canberra ACT 2601
Fax 02 6276 0123
Complaints 1300 362 072
ombudsman@ombudsman.gov.au
www.ombudsman.gov.au

9 October 2014

Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
Parliament House
Canberra ACT 2600

Dear Committee Secretary

Parliamentary Joint Committee on Intelligence and Security's inquiry into the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014

Addendum to submission

Thank you for the opportunity to make a submission to, and make an appearance before, the Parliamentary Joint Committee on Intelligence and Security regarding its inquiry into the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014 (the Bill).

During my appearance on 3 October 2014 I drew the Committee's attention to two issues that did not appear in my written submission.

First, the measures in the Bill dealing with preventative detention orders (PDO):

The Criminal Code Act already imposes an obligation on the Australian Federal Police (AFP) to notify our office when preventative detention orders are made. It would be helpful for the Act to spell out a timeframe within which the AFP must notify the Ombudsman.

As the Act also imposes an obligation for the AFP to inform a person, *while detained* under a PDO, of their right to complain to the Ombudsman. It may be reasonable to require the notification to occur as soon as possible, to ensure that we are aware of the PDO and that we may receive a complaint.

Second, the Bill includes measures to remove certain decisions from review under the Administrative Decisions (Judicial Review) Act and to exempt other decisions (relating to the stopping of welfare payments) from the general obligation under s 13 of that Act to provide a statement of reasons.

There are sound reasons why excluding security matters from a statement of reasons, but the amendment in the Bill goes beyond that and excludes the operation of the ADJR Act altogether. We suggest that this aspect of the Bill be reconsidered.

Additionally, I understand that the Committee has expressed an interest in our oversight of the Australian Customs and Border Protection Service (Customs).

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As with all Commonwealth agencies within the Ombudsman's jurisdiction, our oversight of Customs extends to investigating actions relating to matters of administration either in response to a complaint to our office or by our own motion. We also have a role in overseeing Customs' use of a power under the Telecommunications (Interception and Access) Act, namely accessing stored communications (such as emails and text messages).

The Bill will extend Customs' detention powers. While we do not have a specific statutory role in relation to Customs' exercise of those powers (and the Bill as drafted does not provide one), we will be able to consider complaints about the use of the powers in particular instances and, if appropriate, initiate an own motion investigation into Customs' use of the powers generally. We currently oversight the exercise of detention powers by the Department of Immigration and Border Protection using these mechanisms.

We note that Customs will be affected by the Government's decision to create a new Australian Border Force. We are currently considering the most appropriate oversight arrangements for the Australian Border Force, building on our current work with the Department of Immigration and Border Protection. The extent of the oversight activities we initiate will be a matter for the Ombudsman's discretion, taking into account resourcing priorities.

Finally, in the course of my appearance before the Committee Senator Faulkner asked me about the highest level of security clearance for Ombudsman office staff. I indicated that some staff were cleared to 'negative vet 1'. I was incorrect. The highest level of security classification within the office is 'negative vet 2'. I apologise for any confusion.

Please let me know if the Committee would like any further information about any of the matters I have raised.

Yours sincerely

Richard Glenn
Acting Commonwealth Ombudsman

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