



Australian Government
Attorney-General's Department

February 2015

Senate Legal and Constitutional Affairs Legislation Committee

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

Attorney-General's Department Submission

1. The Attorney-General's Department welcomes the opportunity to provide the Senate Legal and Constitutional Affairs Legislation Committee with this submission as part of the Committee's examination of the Independent National Security Legislation Monitor (Improved Oversight and Resourcing) Bill 2014.

2. The Department offers the following observations to assist the Committee with its inquiry.

Amending the Independent National Security Legislation Monitor Act 2014 (the Act) so the INSLM can review proposed as well as existing national security legislation

3. The Independent National Security Legislation Monitor (INSLM) exists to review and report on existing counter-terrorism laws.

4. The role of scrutinising proposed legislation is already performed by parliamentary committees such as this Committee, the Parliamentary Joint Committee on Intelligence and Security (PJCIS), the Senate's Standing Committee for the Scrutiny of Bills (SSCSB) and the Parliamentary Joint Committee on Human Rights (PJCHR).

5. Additionally, requiring the INSLM to review and comment on proposed legislative measures risks jeopardising the independence and the objectivity of the INSLM when called on to review the operation and effectiveness of national security laws which the INSLM has assisted to develop.

Amending the objects clause in the Act to clarify that the INSLM is required to consider whether Australia's national security legislation is a proportionate response to the national security threat faced

6. The functions of the INSLM under subparagraph 6(1)(b)(ii) of the Act already require the INSLM to consider whether Australia's national security legislation remains **proportionate** to any threat of terrorism or threat to national security, or both.

Enable the Senate Committee on Legal and Constitutional Affairs to refer matters to the INSLM for inquiry

7. The Prime Minister and the PJCIS currently have the power to refer matters to the INSLM for inquiry.

8. It is appropriate that the PJCIS and the Prime Minister remain able to refer matters to the INSLM having regard to the national security responsibilities vested in those roles. Expansion of referral powers to non-national security bodies may not be appropriate. Further, expansion of

the bodies from which referrals may be received may pose an unreasonable impost on the INSLM's resources.

Enable the Australian Human Rights Commission to refer matters to the INSLM for inquiry

9. The Explanatory Memorandum (para 74) to the Bill suggests that this amendment would 'facilitate an efficient and effective dialogue between Australia's independent expert authority on human rights, the Australian Human Rights Commission (AHRC), and the person appointed to review Australia's counter-terrorism and national security laws for, among other things, compliance with Australia's international human rights obligations.'

10. Amending the INSLM Act to achieve this objective is not necessary. Section 3 of the Act already requires the INSLM to assist Ministers in ensuring Australia's national security laws are consistent with Australia's international obligations including human rights considerations. The INSLM may seek information from the AHRC should it wish further consideration of human rights matters.

11. The Department notes the AHRC, in its submission to the Committee, does not support this proposal in the Bill.

Make the position of the INSLM a full time position, that it cannot be left vacant and is supported by appropriate staff

12. The workload of the INSLM will vary considerably depending on the security circumstances, and on whether or not the government responds to any changes in circumstances through enacting new laws. As such, it is appropriate that the position be part time and flexible.

13. One of the potential consequences of changing the position to full-time is that the pool of candidates that would be available to fill the position will become more limited.

14. The Bill also requires the government to make a recommendation to the Governor-General regarding a new appointment before the end of three calendar months after the office is vacated. However, prescribing a maximum vacancy period could raise practical issues and limit the flexibility required of the role.

Ensure that all reports of the Monitor are tabled in Parliament and that the Government is required to respond to the recommendations of the Monitor within six months of tabling

15. It is important for the government to be able to prioritise its legislative agenda, particularly in the context of a changing security environment. Having regard to the complexity of the issues

which may be raised within each INSLM report, it may not be appropriate or practicable to prescribe a six monthly reporting timeframe. The changing security environment, including intervening events, may require focus on alternative security issues. A six month deadline would be inconsistent with the flexibility required to respond to emerging challenges.

16. The Department notes all of the INSLM's recommendations have been considered by government and those considered to be the most pressing gaps in Australia's counter terrorism legal framework have been addressed through legislative change.

17. The government has adopted many of the INSLM's recommendations to date, and continues to consider and review the remaining INSLM recommendations.