

**SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS**  
**BUDGET ESTIMATES 2017**

**Australian Security Intelligence Organisation**

**Question No. BE17-104**

**Senator Watt asked the following question on 25 May 2017:**

Senator WATT: I think we are in no doubt as a result of yesterday's evidence that there is now a policy in place in relation to the Attorney-General's Department. My question was about the Commonwealth bureaucracy more broadly.

Mr Lewis: I do not have any evidence in front of me to suggest that the information is not coming to us. I am not concerned about it.

Senator WATT: I suppose that will be something that you will look at in the course of dealing with the report.

Mr Lewis: Most certainly. That is one of the recommendations.

Senator WATT: Regarding foreign fighters, is it the case that there is not anyone at the table who is able to advise how many people have been prosecuted under the foreign fighters legislation?

Mr Lewis: I do not know.

Senator WATT: Is there anyone here who does?

CHAIR: Only if you know, Mr Lewis. It is a matter for the AFP.

Ms Jones: We are happy to take it on notice.

Senator Brandis: I am not sure what you mean by the foreign fighters legislation, Senator. What specific act do you mean?

Senator WATT: I am talking about the Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014.

Senator Brandis: Which particular provisions are you talking about?

Senator WATT: I do not have the exact provision, but my understanding is that—

Senator Brandis: What is the offence you are describing, I mean?

Senator WATT: Any offence for undertaking military style action in a foreign land. We all know what this legislation is designed to achieve—it is to prevent Australians from fighting overseas. I am wondering whether anyone who has returned to Australia has been prosecuted under that legislation.

Senator Brandis: Well, that is really a question for the DPP. I think you are confusing two things. There is the prohibition on Australians fighting in foreign civil wars which was uplifted from an older 1979 act of the Fraser government and modernised; and then there was, as well, the new offence of being in a declared area—an area declared by the Minister for Foreign Affairs—which does not require the person concerned to be engaged in military or hostile activity but merely being there without lawful excuse in the so-called no-go zone, and there are a series of exceptions like journalists et cetera. Are you talking about both of those offences?

Senator WATT: Yes.

Senator Brandis: I think it is best if we consult the CDPP. Certainly, the CDPP would be the person best placed to give you that information, particularly in relation to briefs of evidence that she may have received.

Senator WATT: Happy to get the precise numbers taken on notice. Are you aware, Senator Brandis, whether anyone at all has been charged under either of those options?

Senator Brandis: As I have said, I will take that on notice.

Senator WATT: Okay.

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

Foreign Fighter and Related Prosecutions as at 12 February 2018

Division 119 (Foreign Incursion and Recruitment) was inserted in to the *Criminal Code* by the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*. Prior to these offences commencing operation, foreign incursion offences existed and were prosecuted under the *Crimes (Foreign Incursions and Recruitment) Act 1978*. The CDPP continues to prosecute both *Criminal Code* and *Crimes (Foreign Incursions and Recruitment) Act 1978* foreign incursion offences. The selection of charges depends on the date on which the offence was committed. Both the *Criminal Code* and *Crimes (Foreign Incursions and Recruitment) Act 1978* contain offences which criminalise preparatory activity. Not only does the CDPP prosecute persons who are alleged to have returned from a conflict zone having engaged in hostile activity, the CDPP also prosecutes those persons who undertake preparatory activity or who give money, goods or perform services for persons engaged in such conduct.

The *Criminal Code* also contains offences which relate to terrorist organisations. Whilst these offences cannot be described as “foreign fighter” offences, the CDPP has conducted a number of prosecution of persons who provided funds to a terrorist organisation which was engaged in hostile activities in Syria or Iraq.

The figures set out in the table below provide details of the number of persons against whom prosecutions have been commenced for offences under Division 119 of the *Criminal Code* or the *Crimes (Foreign Incursions and Recruitment) Act 1978* since 2001 and which involve persons who have returned from a conflict zone or relate to foreign incursions in a conflict zone.

	<i>Crimes (Foreign Incursions and Recruitment) Act 1978</i>	<i>Division 119 Criminal Code</i>
Prosecutions commenced since 2001 of persons who have returned from conflict zones.	4	2
Prosecutions commenced since 2001 of persons for offences related to foreign incursions in conflict zones.*	9	12
<b>SUB-TOTAL</b>	13	14
<b>TOTAL</b>	<b>27</b>	

\*This includes the prosecution of individuals who were preparing for incursion into foreign countries to engage in hostile activities as well as individuals located in Australia who provided services/funding to others to support of their engagement in hostile activities in a foreign country.