

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

Group: 1

Program: Other Agency

Question No. SBE14/197

Senator Ludwig asked the following written question from the 20 November and 11 December 2014 hearings.

1. In your role as the Freedom Commissioner, you expressed concerns about the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014* at the time it was being considered by Parliament. You were particularly concerned about the implications of the new, broadly defined offence of advocating terrorism and changes to the way that organisations can be prescribed as terrorist organisations. The PJCIS shared your concerns and recommended that the Government clarify the scope of the offence, but the Government did not heed this advice.
 - a. Do you continue to hold these concerns about the offence?
 - b. If so, what action do you intend to take to address these concerns?
2. What would be your advice for an organisation or individual who seeks to express views on politically motivated violence in places such as Iraq or Syria so as to ensure that they are not captured by these provisions?
3. There has been strident and wide spread criticism of recent attempts to silence journalists from reporting on national security matters (such as the new section 3ZZHA of the Crimes Act which criminalises the sharing of information relating to the issue of a delayed notification search warrant and new section 35P of the ASIO Act which prohibits disclosure of information relating to a special intelligence operation).
 - a. What is your view of these provisions?
 - b. What do you consider to be the appropriate test for determining when and to what extent a fundamental freedom, such as freedom of expression, should be curtailed?
4. You are part way through your "Forgotten Freedoms" consultation – focusing on freedom of expression, freedom of religion, freedom of association and property rights.
 - a. To what extent will/have you been consulting with the Muslim community, or any other communities who will be particular affected by the enactment of the Government's counter-terrorism laws?
 - b. Will you be consulting with media groups affected by changes to their rights to report on certain national security matters?

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

1. a. Commissioner Wilson's concern regarding the offence of 'advocating terrorism' is that despite the intention of section 80.2C of the *Criminal Code Act 1995* (Cth) as amended by the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014* (Cth), the section could be interpreted by a future government to limit discussion on foreign conflicts.

Commissioner Wilson does not recall expressing a particular concern regarding the changes to the way that organisations can be prescribed as terrorist organisations.

b. The Commission provided a [supplementary submission](#) to the Parliamentary Joint Committee on Intelligence and Security Inquiry into the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014. The submission contained the Commission's views on Items 61 and 62 of Schedule 1 of the Bill, which created the offence of 'advocating terrorism'. Commissioner Wilson concurs with that view.

The functions of the Human Rights Commissioner are contained in the *Australian Human Rights Commission Act 1986* (Cth). In particular, section 8(2) of the Act provides that Commissioners must act in a way that promotes the collegiate nature of the Commission. In view of Commissioner's concurring with the transmitted submission and the collegiate nature of the Commission, no further action will be taken.

2. The provision of advice to an organisation or individual who seeks to express views on politically motivated violence in places such as Iraq or Syria outside of the functions of the office he holds.

3. a. The Commission provided a [submission](#) (hyperlinked) to the Parliamentary Joint Committee on Intelligence and Security (PJCIS) Inquiry into the National Security Legislation Amendment Bill (No 1) 2014. The submission contained the Commission's views on section 35P of the *Australian Security Intelligence Organisation Act 1979* (Cth) (*ASIO Act*) and limitations on the right of freedom of expression.

b. As discussed in the submission to the PJCIS inquiry into National Security Legislation Amendment Bill (No 1), freedom of expression is not an absolute right and may be limited by proportionate measures to achieve a legitimate aim, if protected by safeguards and oversight. Article 19 of the [International Covenant on Civil and Political Rights](#) expressly contemplates that the freedom of expression may be limited for the protection of national security. The protection of national security is a legitimate purpose and of itself makes an important contribution to the protection of human rights in Australia. Such provisions must, however, be proportionate. Each restriction would have to be assessed on a case-by-case basis. Each assessment would be based on the restriction proposed and the risk and consequences of the mischief it would seek to limit. For guidance, both the [Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights](#) and the [Human Rights Committee](#) have provided information on what is to be considered when freedom of expression is to be limited.

4. a. The *Rights and Responsibilities 2014* consultations have involved 13 public events across Australia. Individuals from Muslim communities did participate in these public events. However, people were not asked to disclose their religion. The impact of national security laws was raised at every public event as part of the Commissioner's introductory address, and was consistently raised at forums by different individuals. The *Rights and Responsibilities 2014* consultation also included a submission process. A number of people and organisations raised issues around the Government's counter-terrorism laws. The issues will be outlined in the *Rights and Responsibilities 2014* Report. The *Rights and Responsibilities 2014* consultation also included a number of targeted meetings. Commissioner Wilson met with Muslim community organisations and leaders which included, Dr Ibrahim Abu Mohammad, Grand Mufti of Australia and the Islamic Council of Victoria.

b. Commissioner Wilson has not organised meetings with media groups or organisations to discuss *their* rights to report on certain national security matters. However, we have received submissions from media organisations that outline issues with the amendments to national security and counter-terrorism laws. Comments made in submissions will be outlined in the *Rights and Responsibilities 2014* Report.